

GENERAL AGREEMENT ON TARIFFS AND TRADE

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REPORT OF THE WORKING PARTY ON ACCEPTANCE OF THE ANTI-DUMPING CODE

1. The Working Party on Acceptance of the Anti-Dumping Code was established by the Council on 29 September 1970 with the following terms of reference:

"To examine special problems of developing countries in connexion with the Agreement on the Implementation of Article VI and any proposals and suggestions for a solution to these problems, which may lead to a wide and early acceptance of the Agreement; and to report to the Council."

2. The Working Party met on 23 September 1971 and 27 September 1972 under the Chairmanship of Mr. A. Buxton (United Kingdom), and on 10 October 1973, 1-2 October 1974 and 22 and 24 October 1975 under the Chairmanship of Mr. M.J. Huslid (Norway).

3. The Council invited developing countries to submit explanations of their specific problems with adhering to the Anti-Dumping Code, proposals for their adherence and for the application of the Code to their exports.

4. It appeared from communications from developing countries and from the discussions in the Working Party that the fundamental problem for developing countries in respect of possible anti-dumping measures against their exports was that the home market prices in developing countries for domestically manufactured products were, for various reasons, in most cases higher than those obtainable in the export markets. In order to find outlets abroad for their manufactures, developing countries were thus compelled to sell at prices which could be termed "dumped" under the criteria of Article VI of GATT and the Anti-Dumping Code, although there were no intentions of causing injury or of dumping in the traditional sense of the word on the side of the exporters. A solution would therefore have to be based on the recognition that in the case of developing countries it was not reasonable to use home market prices or production costs as normal values in dumping investigations.

5. The representatives of developed countries expressed understanding of the problems raised by the developing countries, but pointed out that existing Code provisions provided sufficient flexibility to take such problems into account. In

particular, they stressed that Article 2(d) of the Code foresaw that prices for like products exported to third countries could be used for price comparison when there was a particular market situation in the country of export. They pointed out that the changes requested by the developing countries would require revisions of the Anti-Dumping Code and of domestic laws or policies of developed countries that were neither necessary nor appropriate.

6. The developing countries, however, felt that the problems could be overcome by the adoption of a suitable interpretative note to the Code and that, if an international agreement was reached on this matter, it would be only appropriate to bring domestic laws into harmony with it.

7. As an outcome of the discussion at the 1973 meeting, the Working Party agreed to adopt on an ad referendum basis, the following text of a note to Article 2(a) of the Anti-Dumping Code which would enable developing countries to accept the Code, and at the same time avoid a formal amendment that would dilute the strict rules of Article VI and the Code:

"The application of Article 2(a) would not be appropriate for the exports from developing countries in the cases where sales in domestic markets of such exporting countries do not permit proper comparison for the purpose of that Article. For the purpose of price comparison in such cases it would be therefore appropriate to use 'particular market situation' provisions of Article 2(d) which provides, inter alia, for the determination of normal value on the basis of comparable price of the product when exported to any third-country market."

8. The text of the note was referred to the capitals of the countries represented in the Working Party for consideration. Most members of the Working Party found it acceptable. However, one country indicated that it was not in a position to accept the text, as price comparisons in the case of exports from developing countries should exclusively be made with export prices to third countries; furthermore account should be taken in the determination of normal value of the exports of developing countries of the special characteristics of their economies, including balance-of-payments difficulties. It was subsequently supported with regard to these views by several developing countries.

9. At its meeting in 1974, the Working Party discussed a number of proposals made by both developing and developed countries and agreed to continue the discussion at a meeting in 1975 on the basis of the following text:

"1. It is recognized that the determination of normal value on the basis of Article 2(a) of the Code ~~can pose~~/~~would pose~~/~~poses~~ special problems for products exported from developing countries because of the special characteristics of their economies.

"2. In such cases the provisions of article 2(d) [shall/can] apply and normal value [shall/can] be determined [as far as possible] on the basis of comparable price of products when exported to any third country.

"3. In the application of the criteria for the determination of normal value of the exports of developing countries, account shall be taken of the special characteristics of their economies and of their problems [including balance-of-payments difficulties]."

10. After informal consultations between the Chairman and interested delegations, the following compromise text was submitted to the Working Party at its meeting in 1975:

"1. It is recognized that the determination of normal value on the basis of Article 2(a) of the Code can pose special problems for products exported from developing countries because of the special characteristics of their economies.

"2. In such cases the provisions of Article 2(d) shall apply and normal value shall be determined as far as possible on the basis of comparable price of products when exported to any third country.

"3. In the application of the criteria for the determination of normal value of the exports of developing countries, account shall be taken of the special characteristics of their economies and of their problems."

11. Members of the Working Party representing developing countries said that the proposed text did not take fully into account the special situation and problems of developing countries, both with regard to price comparisons and to balance-of-payments difficulties. Members of the Working Party signatories to the Anti-Dumping Code, while expressing their understanding for the problems of developing countries, stressed the need for any solution not to infringe upon the principles and integrity of both Article VI of the General Agreement and the Code.

12. Several amendments to the text reproduced in paragraph 10 were discussed at the meeting and, although the differences of opinion between developed and developing countries did not appear to be too wide, it was not - despite considerable efforts - possible to reach agreement on a text that was acceptable to all members of the Working Party.

13. Some delegations pointed out in the Working Party that proposals had been made in the framework of the multilateral trade negotiations for a review of the Anti-Dumping Code. These delegations suggested that in that broader framework,

there might be a better possibility of finding a solution to the problems examined in the Working Party. The other delegations did not comment on these suggestions.

14. The Working Party, not being able to agree on a solution to the problems referred to it by the Council, considered that it should limit itself to reporting to the Council the opinions expressed in the course of its deliberations.