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GENERAL AGREEMENT ON TARIFFS AND TRADE

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ANTI-DUMPING POLICIES

Observations by the United States Government

At the meeting of the Group on Anti-Dumping Policies on 19 July 1965 the United States delegation indicated that it would prepare a response to the United Kingdom note on United States anti-dumping legislation (document TN.64/NTB/38).

The United States Government has now transmitted to the secretariat the observations reproduced below.

The United States Government desires to make the following observations with respect to the note by the United Kingdom delegation contained in TN.64/NTB/38.

The United States strongly emphasizes that neither the United States Anti-Dumping Act, the regulations issued thereunder, nor the administrative procedures employed in the administration of the Act and regulations are in violation of or inconsistent with Article VI of the GATT. Furthermore, the United States has administered and continues to administer its anti-dumping laws in a manner that does not constitute a barrier to international trade where dumping is not involved.

The major objective of United States policy in implementing its anti-dumping laws is to assure that import competition is both free and fair. The United States is convinced that both the overall experience of importers and exporters dealing with the United States market and the level of imports into the United States give clear evidence that the administration of the United States anti-dumping laws has not in any significant way adversely affected trade with the United States.

Turning to the various specific topics dealt with in the United Kingdom note, the United States Government desires to make the following comments.

A. Withholding of appraisement

The United States Anti-Dumping Act requires the withholding of appraisement in appropriate circumstances before a determination has been made as to whether or not the merchandise is being sold at less than fair value. The Treasury Department is, however, extremely circumspect in arriving at a decision that the action of withholding appraisement is required.

In a study of dumping investigations made in recent years involving merchandise from the United Kingdom, it was noted that of thirteen investigations only three resulted in withholding actions. Of these three, one ultimately led to a determination that there were sales below fair value, and in the other two, price revisions were undertaken before a determination could be made.

It is believed that the study illustrates that importations from the United Kingdom have not been the subject of numerous, hasty, or inappropriate withholding actions. Experience with importations from other countries is, moreover, quite comparable with that of importations from the United Kingdom.

Attention is also directed to the fact that the amended anti-dumping regulations, which became effective in January 1965, limit the application of withholding of appraisement. Under the regulations as they presently exist, withholding of appraisement on the vast bulk of merchandise to which any such withholding order may be applied will be limited to merchandise entered or withdrawn from warehouse after the date of publication of the Withholding of Appraisement Notice.

The bond practice to which the United Kingdom refers in paragraph 2 of its note is a simple and normal procedure for ensuring that all duties that may become due will be paid. It is used in connexion with virtually all importations into the United States and the current practice is not onerous.

It is believed that the United Kingdom note exaggerates the effect that withholding appraisement has on importations during the effective period of a withholding order. A relatively recent study indicated that withholding orders are not necessarily followed by termination of importations or, indeed, by the lessening in volume of such importations; although some instances of such effects could be cited, there are others in which imports have remained relatively unaffected or have increased.

Although, as a GATT report, the report of the Group of Experts appointed by the CONTRACTING PARTIES has no binding force, the United States notes that the report recognized that in certain circumstances the use of provisional anti-dumping measures could be justified. The report further stated that the experts "generally felt that provisional measures should be used sparingly". Such sparing use is the rule with respect to the United States use of withholding orders. The report also suggested the use of a bond as being appropriate in connexion with provisional remedies; and, as has been stated, it is a bond procedure which is used by the United States in connexion with its withholding orders.

It should also be observed that in the two cases cited in paragraph 4 of the United Kingdom note as lasting over one year, the delay resulted in large part from the request of the exporters to have additional time to present factual material and legal arguments. There is a continuing search for improved methods of procedure to reduce the time lapse in dumping cases but the present length of Treasury investigations is primarily the result of our efforts to assure that all concerned, including foreign exporters and United States importers, have a full opportunity to present all relevant facts and arguments.

B. Initiation of investigations by the United States Administration

The United States Government is in accord with the view expressed in the report of the GATT Group of Experts, which stated that the initiation of anti-dumping action "should normally come from domestic producers". The large majority of United States anti-dumping investigations arise on the basis of complaints by American producers. Only in a minority of cases is the anti-dumping investigation initiated on the basis of information originating within the United States Customs Service. The United States believes that it is reasonable (and in keeping with the report) for it to initiate anti-dumping proceedings in certain circumstances.

Although the Treasury Department is reconsidering the amendment of Customs Form 5515, which it had proposed in February, it should be pointed out that the United Kingdom observations in paragraph 12 with respect to that form reflect a misunderstanding of its purpose. That purpose was not to discover situations in which price differentials exist but, rather, to allow explanation of any such price differentials.

C. Procedure of investigations

The United States Government believes that the separation of the price and injury investigations in dumping cases ensures that the preliminary price investigation will be isolated to the greatest possible extent from the pressures which can exist in situations in which injury is apparent or strongly alleged. Such separation, moreover, results in a specialized, trained and objective viewpoint being separately devoted to each aspect of the dumping case.

The United States Government desires also to draw attention to the fact that during the first eight months in which its revised anti-dumping regulations have been in effect ten anti-dumping investigations were started. During the same period, seven investigations were terminated by determinations of no sales below fair value on the basis of the new Section 14.7(b)(9) of the regulations, which provides for termination of complaints after revision of prices or other changed circumstances. It is believed that this fact should be taken into account in conjunction with any consideration of United States anti-dumping procedures.

D. Quantity discounts

The United States cannot accept the contention that the provisions of Section 14.7(b)(1) of its anti-dumping regulations are in any sense unreasonable or contrary to Article VI of the GATT. Experience has shown that vague criteria as to quantity allowances create significant problems for all concerned. The United States desires also to point out in this connexion that no claim for allowance of a quantity discount was rejected by the United States during the first eight months of experience under the new regulations.

E. Disclosure of information

The United States Government believes that Section 14.6a of its revised anti-dumping regulations recognizes and preserves appropriate confidentiality in connexion with anti-dumping investigations. It points out, in this connexion, that during the first eight months of experience under the revised anti-dumping regulations the provisions of Section 14.6a have not precluded the acceptance of any information in any anti-dumping case and, further, that no request that information be regarded as confidental was rejected during this period. Although it may well be that certain requests for confidential treatment of information will be rejected in the future, the United States has every intention of administering these regulations reasonably, as it has been doing. It is well to emphasize at this point that if a request for confidential treatment should be rejected, the information would not be disclosed but would merely be regarded as not adding support to the position of the person furnishing the information.

F. Determination of material injury

The United States Government believes that determinations of injury made in anti-dumping cases are fully consistent with Article VI of the GATT. The mere presence of imports in large volume is not a sufficient basis for such a determination. The Tariff Commission has been meticulous in refusing to make a determination of injury under the anti-dumping law unless the injury has been both material and caused by the price advantage obtained by sales below fair value. It should be noted that the Tariff Commission's hearings are public and its decisions and reasons therefore are also made public. Finally, the decisions of the Tariff Commission can be challenged in the courts if it is believed that they are contrary to law.

The United States fully agrees with the report of the Group of Experts that "no precise definitions or set of rules can be given in respect to the injury concept". It points out, further, that a continental economy of the size and diversity of the United States presents problems of definitions of industry and of injury that are not encountered by countries with smaller markets, and that due regard has to be given to those problems. An examination of Tariff Commission decisions would indicate that the Commission agrees with the statement in the report of the Group of Experts that "as a general guiding principle judgments of material injury should be related to total national output of the like commodity concerned or a significant part thereof" (underlining supplied); there of course can be no rigidly applied rules in this regard.