

# GENERAL AGREEMENT ON TARIFFS AND TRADE

Trade Negotiations Committee  
Sub-Committee on Non-Tariff Barriers

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## ANTI-DUMPING PROCEDURES AND DUTIES

Communication from the International  
Chamber of Commerce

The International Chamber of Commerce has transmitted to the secretariat the text of the following report adopted by the Commission on Formalities and Regulations in International Trade on 18 May 1966, and approved by the Executive Committee of the ICC.

### I. THE ICC STATEMENT OF 17 MARCH 1964

On 17 March 1964, the ICC submitted to the CONTRACTING PARTIES to GATT a statement on non-tariff barriers to trade and their treatment in the GATT Trade Negotiations (document 102/35).<sup>1</sup>

The section of the statement dealing with "anti-dumping procedures and duties" reads as follows:

"From a preliminary survey of the subject, the ICC is convinced that present procedures for combating dumping and levying anti-dumping and countervailing duties are unsatisfactory in a number of countries, often contrary to the principles of GATT Article VI, and a definite hindrance to international trade. Whether or not these procedures are strictly speaking non-tariff obstacles according to the criteria set out above in paragraph 4, the ICC would therefore urge the negotiating governments to include this question among the non-tariff barriers to be discussed at the GATT Conference.

"The ICC suggests that two approaches might be adopted. The first would be to obtain a commitment from all negotiating governments to drop practices not in conformity with Article VI of the GATT and at the same time agree upon a procedure of consultation between governments before any measures are taken by individual governments unilaterally. The second would be for the negotiating governments to decide to start work either during the trade negotiations or immediately after upon the drafting of an international code of anti-dumping procedures."

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<sup>1</sup>GATT document TN.64/13.

The two approaches suggested by the ICC - the dropping of practices not in conformity with Article VI and the drafting of an international code - would moreover be closely connected. It goes without saying that the governments taking part in the negotiations should begin by abandoning any practices recognized to be contrary to Article VI. But the latter merely lays down general principles and in practice leaves a wide margin to the judgment of signatory States even when they are doing their utmost to observe the GATT rules. It is therefore essential, with a view to harmonizing the interpretation and application in each signatory country of the generally agreed rules, both to supplement these rules by drafting and adopting a more detailed code of anti-dumping procedures than that contained in Article VI, and also to establish a procedure for consultation between the governments concerned, of a more specific and compulsory nature than that outlined in principle in Article XXII of the Agreement.

The purpose of the present report is to restate the reasons for the 1964 statement and to show how the ICC envisages its implementation.

## II. REASONS FOR THE 1964 STATEMENT

### A. Inadequacy of Article VI of GATT

According to Article VI of GATT, anti-dumping duties may not be levied unless the following two conditions are met

1. a product must be introduced into the commerce of another country at less than its normal value, and
2. such dumping must cause or threaten material injury to an established industry or materially retard the establishment of a domestic industry.

But while the theory is clear enough, the experience of these past few years has revealed considerable differences of interpretation and application from one country to another.

### B. The Report by the GATT Group of Experts (1961) - lessons and limitations

The need to clarify the concepts contained in Article VI has long been apparent to the CONTRACTING PARTIES, who have tried to remedy this situation.

In March 1961, a report by a group of GATT experts on anti-dumping and counter-vailing duties was published. This excellent piece of work does much to clarify the content and intentions of GATT Article VI, and represents a first step towards a uniform interpretation of the rules laid down therein.

But the report is still far from settling the question. It allows many doubts to remain, particularly concerning the "differences of quantity" to be taken into account in assessing differences in conditions of sale, and the significance of the term "material injury".

While the experts' work deserves approval, and while governments should be recommended to adopt it, it thus holds out no hope of settling all the problems arising in the struggle to prevent dumping.

Nevertheless, the 1961 report represents a first step forward which cannot now be reversed.

### III. THE ICC RECOMMENDATIONS

How is the report of the GATT experts to be supplemented, or in what other ways can progress be made in this same direction?

The ICC believes, for its part, that GATT signatory States should agree on an international code of anti-dumping procedure, the provisions of which would correspond substantially with the following principles:

- A. Principles on which an international code of anti-dumping procedure should be based
1. Save in exceptional circumstances, anti-dumping procedures should only be initiated when domestic producers submit a complaint to the effect that imports at dumped prices are causing them material injury.
  2. An application should only be accepted by the authority concerned when it is made by or on behalf of domestic producers whose total production of the like goods represents, both in value and in volume, a major proportion of the total domestic output of these goods.
  3. Any complaint must be supported by information showing, prima facie, that imported products are being sold at prices below comparable prices in the exporting country or other export markets and that the producer concerned is thus suffering or likely to suffer material injury.
  4. Any complaint accepted by the authorities of the importing country should at once be notified to the exporter and his government with an indication of the prices to which the plaintiff objects. The authorities in question would be required to take into consideration all counter-evidence submitted to them either by the exporter or by his government, while treating it as strictly confidential if business secrets are involved.

5. Until such time as a final decision can be taken, no provisional measures should be applied unless they are essential in order to stop or prevent really serious injury, and then only for a limited period.
6. These provisional measures should consist only of requiring deposits not exceeding the price margins to which the complaint refers. If the latter turns out to be unfounded or excessive, the importer would have the right to a refund of any sum wrongly levied.
7. The customs should in no circumstances be able to use an allegation of dumping as a pretext for withholding or delaying the clearance of the goods in question.
8. In the sense of Article VI of the GATT, "domestic industry" should be taken to mean all or most of the domestic production of products similar to the imported products against which a complaint has been brought, and these products must be clearly identified.
9. "Material injury" should be understood to mean a substantial reduction in the returns obtained by a domestic industry as defined above. In each individual case it should be determined that the dumped imports and not any other factors are the cause of this reduction.
10. The degree of injury suffered by the domestic industry and the cause and effect relationship between dumping and such injury should always be determined by means of convincing evidence, and not merely on conjecture, before any anti-dumping duty is applied.
11. The amount of anti-dumping duty should never exceed the margin of dumping or the amount sufficient to remove the injury. It may be less.
12. Nevertheless, should several exporters in the same country be practising dumping for a given product, but with varying margins between the export price and those adopted for purposes of comparison, the anti-dumping duty may be levied on a uniform basis - that of the largest margin observed at the time of the inquiry - provided that the importers or exporters subjected to this duty are permitted to request a partial refund if their margins are smaller.
13. If the exporters engaging in dumping belong to more than one country, the measures taken against them shall not involve any discrimination as to the nationality or origin of the goods.
14. The decision taken by the authorities in the importing country must at once be notified to the other States concerned. In no circumstances can it be retroactive, except in order to make certain provisional measures final.

15. Any anti-dumping duty should be periodically revised and altered in the light of fluctuations in prices in the importing or supplying countries.
16. Anti-dumping measures should be revoked as soon as they are no longer necessary.
17. The authorities applying them should agree to carry out a review of the position whenever the exporters or importers of the goods in question so request.
18. In the case of action on behalf of an industry in third countries, the enquiry procedure should be initiated by the importing country only at the request of the government of the exporting country which considers itself injured by the practice.
19. The decision should be taken by the importing country in the light of the injury to the industry as a whole and not just of injury to that industry's exports.

B. Compulsory declaration of price on market of origin of all imported products

Apart from the questions to be settled by this code, a general problem arises concerning the information to be given in the customs declaration required of any importer whether or not he is suspected of dumping.

Article VI of GATT implies that the CONTRACTING PARTIES may require that the forms submitted to their customs authorities indicate the price of any imported product, either on the home market of the exporting country or on the markets to which it is also exported. At first sight this would seem to provide an easy method of comparing the price declared on importation and the various reference prices listed in Article VI with a view to determining the normal value.

But in actual fact the customs authorities will thus detect only those forms of dumping the perpetrators of which are sufficiently naive to walk straight into such a trap. The others will manage to find - by misinterpreting the concept, in itself a reasonable one, of the "level at which the transaction takes place", or by making the corrections which are required, sometimes legitimately, by differences of quality - a home market price which is at least equal to the declared value. If they are asked which of their export prices is the highest they will simply repeat the price at which the goods are being sold at the moment. This form of fraud can be discovered only by means of an inquiry in the country of exportation, and it is scarcely conceivable that the customs authorities should carry out such inquiries permanently and systematically in the case of imports which have aroused no complaints or suspicions.

Such compulsory declaration is therefore liable to be ineffective. On the other hand, it would be of great inconvenience to scrupulous importers wishing to avoid making false declarations, who would therefore have to find out the domestic price of the goods they imported; this would involve them in finding a level of transaction corresponding to their own; in many cases this does not exist in the distribution networks of the country of origin. Moreover, the exporter would be the only person in a position to inform them of the prices charged by him for exports to other foreign countries; would he agree to give one of his buyers information on the prices offered by him to other customers, and if so would the information given by the supplier be trustworthy enough for reproduction in the customs declaration?

Any inaccuracy in the latter is almost always heavily penalized. If an exception to this rule were made for information to be used for comparative purposes in the detection of dumping, exporters selling at a loss and making false statements would be sure of going unpunished. One may be tempted to reply that only mistakes made in good faith would be excused. But in customs matters it is very hard to prove good faith. Article 369 of the French Code of Customs even stipulates under the heading "Action Forbidden to Judges", as an exception to the universal principle of penal law, "in dubio pro reo" - "The judges are expressly forbidden to accept as a defence that those infringing the regulations had no intention of so doing."

There is thus a risk of inflicting serious inconvenience on all importers - only a minute proportion of whom can be suspected of engaging in dumping - without doing much to detect the practice.

In short, the ICC urges most strongly that States give up the idea of including in their customs forms any requests for "preventive" information with a view to detecting dumping. This recommendation particularly concerns paragraph 2<sup>4</sup> of the introduction to the proposal submitted by the EEC Commission on 5 May 1965 to the Council of Ministers of the Community. This paragraph seems to invite the six member countries to take the same course of action as third countries such as the United States, whereas the latter, whose customs tariffs are generally based on FOB delivery prices, cannot refrain from asking that this price be declared.

#### IV. BOUNTIES AND SUBSIDIES

Article VI of the GATT provides for imposition of countervailing duties to offset the granting, directly or indirectly, of any bounty or subsidy on the manufacture, production or export of a product in the country of origin or exportation, under the same conditions in which anti-dumping duties can be imposed. Thus, the same considerations and rules must apply in considering action against subsidies as in considering anti-dumping action.