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GENERAL AGREEMENT ON TARIFFS AND TRADE

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ANTI-DUMPING CHECK LIST

Addendum

Comments by Sweden

General remarks

One of the main objectives of the GATT is, through reciprocal arrangements, to work towards freer conditions in international trade and increased exchange of goods. By participating in this work the member countries have recognized the importance of an extended competition and have accepted the limitation of their freedom in trade policy, which follows from the consessions given in tariff negotiations. This co-operation has resulted in a substantial reduction of tariffs and other trade barriers over the past years. This development has been possible due to the fact, among other things, that the GATT is permitting the member countries - on certain conditions and notwithstanding the principle of most-favoured-nation treatment - to take action against imports that cause or threaten to cause material injury for an industry in the importing country. It is against this background, the provisions on anti-dumping and countervailing duties of Article VI of the GATT must be regarded.

The possibilities of using anti-dumping measures can however be practised in such a way that trade is seriously affected. Already the intention of making an investigation regarding suspected dumping can have a considerable negative effect. Anti-dumping measures should therefore be confined only to exceptional cases and when absolutely necessary because of the material injury of the dumping. If the anti-dumping measures are not recognized as merely emergency solutions there is a considerable risk that the value of the tariff reductions and bindings previously gained is reduced. Another important thing is that anti-dumping measures are applied in such a form that trade is affected to the smallest possible extent.

The Swedish Government wishes to make the following remarks to the items VI, VII and VIII of GATT document TN.64/NTB/W/8. Moreover it wishes to state that these remarks are not final but should be regarded as preliminary, as a more thorough study will be made later when commenting on all the items of the check list.

VI. Anti-dumping duties

A. Imposition

1. Obligatory
2. Permissive

According to the Swedish view it should be the responsibility of the Government (or of an authority of appropriate rank nominated by the Government) to take the decision to impose an anti-dumping duty. The decision for imposing this duty should be based on what has been revealed in the case through an investigation concerning both dumping and injury. This means among other things that an automatic system, based on certain standard directions, cannot be regarded as satisfactory. There should be no compulsory obligation to impose an anti-dumping duty, even if the criteria for this are at hand.

B. Applicability

1. All imports from all sources
2. Imports from country of origin of dumped goods
3. Individual exporters only

According to the Swedish view any of these methods could be used depending on the circumstances in each case. In this connexion it must be noted, however, that a decision to impose an anti-dumping duty in principle should be applied non-discriminatorily on all dumped imports that cause the same injury. All imports of the goods in question should be taken into consideration when an investigation on dumping is carried out, no matter if the complaint in question concerns one or more exporters or one particular country or many countries. When taking a decision on anti-dumping duties, this should be drawn up in such a way that the measures not only affect the imports against which the complaint is made but also against other dumped imports in relation to the effect of the injury.

C. Amount of duty

In Article VI of the GATT there is no other provision regarding the amount of duty than that the duty must not exceed the margin of dumping. It is thus allowed to impose an anti-dumping duty of the same amount as the dumping margin even if such a duty is not necessary from the point of view of protection. The Swedish view is that the anti-dumping duty should have no other purpose than to prevent material injury for the industry. A code regarding anti-dumping procedure should therefore contain a recommendation stating that the duty in each case - within the dumping margin - shall not exceed what is necessary to counter the effects of the injury. Such a clause makes an appraisement of the need for protection in each case necessary, which is in line with the importance of the criterion of injury as the determinating factor. In this connexion the ordinary customs duties must also be taken into consideration. This is particularly

important in those cases where the protection of these duties is not normally made use of to the fullest extent but where the duties can be regarded as protection against dumping.

In such cases of dumping where more than one exporter is involved the question is, if the duty ought to be adjusted in each case. If the dumping and its scope are estimated individually for each exporter at every time of importation this question might not in principle cause any problem. Such a procedure would, however, in most cases be too complicated. On the other hand a system of fixed rates of duty does not seem to be satisfactory. It would among other things be necessary to check the origin of the imported goods. Moreover it is possible that this system will frequently result in requests for reimbursement of duty paid in excess. From these points of view the best way seems to be to use a method based on a comparison price (basic price), determined in such a way that it does not exceed either the lowest home market price in any supplying country where normal conditions of competition are prevailing, or the home market price unaffected by dumping, in the importing country. This system means that a duty is imposed only with an amount equal to the difference between the actual export price and the basic price. If in individual cases it can be proved that the home market price in the supplying country is lower than the basic price laid down, a corresponding reduction in the duty is granted. The advantage of this system is to be found in the fact that imports at prices exceeding the basic price are automatically free from anti-dumping duty. Moreover, this method means that the exporters are given enough room to adjust their prices to the situation of competition in the importing country. Logically the system seems to be in line with the principle mentioned above that the duty should not exceed what is necessary to prevent injury.

D. Retroactive application of duties

For an individual consignment of goods the application of a decision to impose anti-dumping duties provisionally or definitely should be governed by the same rules as regards normal duties. Retroactive application should not be permitted. This means, among other things that a provisional duty levied on an individual consignment of goods should not be allowed to be increased later, even if the measures finally taken mean a higher rate of duty.

E. Duration

A decision to impose an anti-dumping duty should be cancelled when it is evident that the conditions that caused the decision no longer exist, i.e. when dumping no longer is at hand or no longer cause or threaten to cause material injury. It should therefore be the task of the authority concerned regularly to look over the conditions which led to the decision of levying the anti-dumping duty. This should be the case irrespective of the way in which the duty is imposed. The

inconveniences of longlasting measures seem, however, to be less accentuated when using the basic price method, which automatically leaves out deliveries at prices exceeding the comparison price, than when using a method with fixed rates of duty.

VII. Provisional duties

Provisional measures may be justified to limit or prevent injury during the time of investigation. Therefore there should be possibilities for applying such measures. Even a provisional duty means, however, a severe burden to trade and should therefore be used with great caution and only when the authorities concerned are fully convinced that material injury will otherwise be caused to the domestic industry. As regards the duration of the measures taken, there would be some disadvantage to lay down a fixed period which could be too short as this could lead to a decision of anti-dumping duties on the basis of a non-sufficient investigation. In any case there should be possibilities for extension of the duration if this is regarded necessary. As stated under point VI.D retroactive application should not be used. If the decision involves a request for security or deposit it should be clear for each case from the decision what highest amount can be necessary to pay. The amount of duty provisionally paid and not used owing to finally set rate of duty should be reimbursed.

VIII. Investigation procedures and procedural fairness

A. Initiation of investigations and consequences thereof

The initiative for a dumping investigation should normally come from the domestic producers who consider themselves injured. This does not mean that the authorities concerned can completely give up the right to initiate an investigation. A regular control by the authorities should, however, be regarded as an exception, e.g. in sectors which are subject to governmental regulation with regard to the formation of prices. With regard to the fact that already the initiation of an investigation might mean a serious disturbance to trade it seems to be reasonable that the applicant for anti-dumping measures is demanded to give as full evidence as possible of the alleged dumping.

1. Publicity of investigation

The demand that the initiation of an anti-dumping investigation should be made publicly known seems to be reasonable as it is important that the case is studied as thoroughly and comprehensively as possible. In any case it is necessary that the suppliers, when anti-dumping measures are considered, in some way are given the opportunity to present their views, for example through the importers. The importance thereof will, however, in the individual case have to be judged against the disadvantages that can be expected. Thus it is possible that a widespread

publicity in certain cases can lead to undesirable effects, e.g. on one hand an unnecessary decline in trade, on the other speculative purchases, which in turn can make provisional measures necessary in a too early stage. The question of publicity and the time thereof should be dealt with according to the circumstances in each particular case. In an anti-dumping code regulations should not be expressed in such a definite way that a more simple procedure is made impossible.

2. Confidential treatment of information

The complaining industry as well as the foreign supplier may need to support the complaints respectively the defence with information which should not come to the knowledge of the opponent. The authorities concerned should treat such information as strictly confidential but still take it into consideration in their investigation.

B. Finding of dumping and material injury

Opportunities given exporters; written statements, public hearings.

As stated under item VIII.A.1 it must be deemed reasonable that the exporters, if anti-dumping measures are considered, some time during the investigation, are given the opportunity to put forward their views.

C. Information gathering in country of export

It is natural that when controlling the prices in the exporting country official material is used at first hand. The possibilities therefore may, however, vary for different goods. Direct contact with the exporters concerned may be desirable in certain cases to obtain a faster and safer view of the matters. Before such a contact is taken the authorities of the exporting country should be informed. It must be deemed important that the exporters, in order to avoid misunderstandings, are given the opportunity to verify the reports which may come out through such contacts.