

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers

GROUP ON ANTI-DUMPING POLICIES

Note by the Secretariat on Meetings on 10-11 May 1966

Revision

The Group on Anti-Dumping Policies examined at its meeting on 10-11 May 1966 the views submitted by governments (TN.64/NTB/W/10 and Addenda 1-9) on items VI, VII and VIII of the Anti-Dumping Checklist (TN.64/NTB/W/8).

This note attempts to set out the areas where the views seem to be in agreement and, for the areas where at this time there was disagreement, to note briefly the range of views presented. The purpose of the paper is neither to reproduce nor to summarize the views of individual members of the Group. Rather, it is to focus attention on those aspects or issues on which further examination by members must take place if agreement is to be reached on an international anti-dumping code or arrangement.

VI. Anti-dumping duties

A. Imposition: obligatory, permissive

There was unanimity of views in the Group that the imposition of the anti-dumping duties must be permissive, not obligatory.

All members but one agreed that it would be desirable if the national legislation allowed for discretion in the imposition of anti-dumping duties when specified - and internationally agreed - conditions were found to exist. The view was expressed that the Code should contain a rule to this effect.

B. Applicability: all imports from all sources, imports from country of origin of dumped goods, individual exporter only

There was agreement in the Group that anti-dumping duties should only be imposed on goods which were actually dumped. It was also the commonly held view that, if imposed on any, they should be imposed on all dumped goods from all sources or suppliers: that is that there should be no discrimination.

It was also agreed, however, that in many cases it would not be possible to establish the facts as to dumping with respect to imports from certain suppliers at the time when imposition of the duty was clearly justified on imports from some suppliers. In such cases, it was said, it might be desirable, in order to deter additional dumping, to impose duties on all imports of such goods from the country of origin of the dumped goods and later reimburse the duties collected on products which it was found were not imported at dumped prices. Others contested this view, holding that anti-dumping duties should be used only to cope with actual occurrences, not to prevent them.

C. Amount of duty

There was agreement in the Group that the amount of the anti-dumping duty must not exceed the margin of dumping. All members of the Group seemed to hold the view that the duty might be less than this margin if such lesser duty were adequate to remove the material injury to the domestic industry.

Some members of the Group were, for reasons of administrative facility, in favor of establishing, within the margin of dumping, a basic price above which it had been determined that no action should be taken. Certain reservations were made in this respect, but the matter was not examined in any detail.

D. Retroactive application of duties

Most members of the Group shared the view that anti-dumping duties should not be applied retroactively, except in cases where provisional measures had been applied. If the duty fixed in the final decision should be higher than the provisional duty paid, if any, the difference should not be collected, if it were lower, the difference should be reimbursed.

At least one country, however, held the view that it was appropriate to levy duties retroactively to the date of the public notice of a dumping investigation. Some countries also pointed out that the direct link in their legislation between the value for customs duty purposes and the current domestic value in the country of export for the purpose of assessing anti-dumping duties might create an element of retroactivity in their application of anti-dumping duties.

E. Duration

There was no opposition to the view that the anti-dumping duties should remain in force only as long as they are necessary in order to counteract dumping which is causing or threatening to cause material injury.

It seemed that all members might be able to endorse the view that there be an automatic periodic review. There were some differences of opinion, however, as to whether such a periodic review would be useful, some advancing the view that the possibility for the importers to request a review would be sufficient. Several delegations were not prepared to comment on the suggestion that the injury aspect should be automatically reviewed, while the price aspect should be reviewed at the request by importers.

VII. Provisional measures

There was general agreement in the Group that provisional measures should only be taken in cases where there was prima facie evidence of dumping and material injury and where there was danger that the injury would otherwise be caused while the investigation was being carried out. There was also general agreement that attention would have to be focussed on conditions for applying provisional measures. There would have to be criteria with regard to the basis for a judgment on the price and injury aspects.

There were, however, important divergencies of opinion as to the exceptional character of the provisional measures: some members considered that they should only be used in very rare cases whilst others thought that resort could properly be had to them more frequently. It was agreed that it would hardly be possible to fix in a code exact standards for their application. Most members agreed that the regular valuation for customs purposes should take place independently of an anti-dumping investigation.

With regard to the form of the provisional measures, most members favoured restricting them to securities or bonds reflecting the amount of the duty provisionally estimated. One member referred to the withholding of appraisal as the appropriate provisional measure. It was pointed out that this practice did not necessarily create uncertainty, as the importer generally knew the amount of the normal duty and he was also given a fairly good indication of what was likely to be the margin of dumping. This is an area in which the discussion brought out important differences of view.

There were also differences of opinion as to the fixing of a time-limit for the duration of provisional measures. All members agreed that the investigations should be conducted with all possible speed in order not to keep importers in a state of uncertainty longer than necessary. Some members were in favour of the

fixing of a limit of three or six months. Others stated that they would find it difficult if not impossible to accept any fixed limit, pointing out that such a time-limit could unduly hasten the investigation and lead to an unfair decision.

VIII. Investigation procedures and procedural fairness

A. Initiation of investigations and consequences thereof

Most members of the Group held the view that not only should investigations not be initiated, except in rare circumstances, otherwise than on the basis of complaint by the industry affected but that in taking action on the basis of such request from the industry the authorities concerned should do so only when the request was supported by evidence both on injury and dumping. Such members also agreed that governments should, in special but rare circumstances, be able to initiate themselves anti-dumping investigations. Supporting evidence in respect of both injury and dumping would also be required in such cases. Other delegations held the view that initiation by governments, while not routine should also not be regarded as rare and it was important that governments retain authority to initiate action on their own motion. It was particularly pointed out by those holding this view that it would frequently be difficult for small industries to establish whether dumping by foreign competitors was the cause of their market difficulties or to produce sufficient background material to justify an investigation; in such cases it would be reasonable to provide for action by governments. Moreover, in deciding whether to initiate an investigation the authorities should not be unduly severe in judging the evidence submitted by complaining producers. Here, too, is an important area in which significant differences of view persist.

1. Publicity of investigation

Most members agreed that a certain amount of publicity - e.g. the publication of a brief notice that investigations were being initiated - would serve a useful purpose. One delegation held that public announcements were not desirable because they were likely to alarm other importers and users and so magnify the disruptive effects.

One delegation, however, attached great importance to fair and open procedures in anti-dumping cases so that exporters would have an opportunity for defence against arbitrary anti-dumping actions. Others were of the opinion that the publicity should be restricted to the notification at the outset of the investigation.

2. Confidential treatment of information

There was general agreement that material submitted on condition that it should be treated as confidential should not be made public. One government made it clear, however, that in its opinion it should always be possible to disregard information which its supplier refused to make public.

B. Finding of dumping and material injury: opportunities given exporters; written statements; public hearings

There was general agreement that the exporters should be given ample opportunity to present any information they considered useful in respect to the case in question. There were certain differences of opinion as to the usefulness of the comments which exporters could submit with respect to the injury aspect.

There were some differences of opinion in the Group regarding public hearings. Most members considered that public hearings would not be compatible with the confidential treatment of information submitted, while on the other hand the view was expressed that public hearings were an essential element in safeguarding impartiality and public confidence in the procedures.

One delegation strongly emphasized the great importance it attaches to fair and open procedures which give all parties to an anti-dumping case an opportunity to present a defence.

C. Information gathering in country of export

The view was general that investigations and discussions directly with the exporters concerned in their country could be the most efficient way of obtaining relevant information. Most members agreed that information gathering in the country of export must always be subject to the consent of the government and the industry of that country.