

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers
Group on Anti-Dumping Policies

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ANTI-DUMPING CHECKLIST

Comments by Norway on Items I-V and IX-XIII

I. Concept of dumping

Article VI of the GATT reflects in general the opinion of the Norwegian authorities as regards dumping. From the Norwegian point of view there seems to be no important reason on this occasion for going into details as to the basic ideas behind the provision.

A. Price discrimination criteria

The Norwegian authorities regard the definition of dumping in Article VI as satisfactory. At least, it would be difficult to find a better and more practical way of determining whether dumping is taking place.

There seems in fact to be a slight discrepancy between the price comparison criteria and the cost of production criterion. The two first criteria imply that there shall be no price discrimination between national markets beyond what is clearly cost justified whereas the third criterion will permit price discrimination in all cases where the export price is not below the unit cost of production plus a reasonable addition for selling cost and profit.

A difficult problem will arise if the domestic producers base the application for anti-dumping action on one of the two first criteria whereas the foreign exporter maintains that there is no comparable domestic price and that the export price covers the cost of production plus reasonable profit. This question should probably be the subject of discussion in the Group.

On the other hand experience has shown that the cost of production criterion is in most cases wholly impracticable. The question raised above therefore seems to have mainly theoretical interest.

Furthermore, the discrepancy pointed at will to some extent be levelled out as a consequence of the injury criterion since export prices which clearly cover cost of production plus a reasonable profit margin will probably not tend to cause or threaten material injury to producers in the home market.

As regards the order in which the price discrimination criteria should be used we support in general the views expressed by the GATT Group of Experts. We would, however, add that the use of the criterion under paragraph 1(b)(i) (the price for export to third countries) might also be justified in cases where the domestic sales are insignificant compared with the volume of exports to third countries. This is also recognized in the United Kingdom Draft Code (Provision 11(a)).

In view of the very difficult task of comparing prices it ought perhaps also to be considered whether it would be appropriate - in case of doubt - to use the price for export to third countries as a guideline beside the domestic price. Such a procedure would probably give a better basis for determining whether dumping is really taking place.

The export price to be compared with the normal domestic price should normally be the ex factory or f.o.b. price on sales for export.

The domestic price (or the price for export to third countries) is, however, seldom directly comparable. Article VI says that due allowance shall be made for differences affecting price comparability. The Article does not, however, contain any details as to what these differences may be, let alone to what extent they should be taken account of. The report from the Group of Experts is also rather vague on this point.

Experience has shown that the following factors are fairly frequent:

- (a) the price quoted for domestic sales and export refer to different levels of trade;
- (b) the terms of sales (first and foremost as regards volume) differ;
- (c) the advertising and selling costs are not the same for domestic sales as for exports;
- (d) the physical characteristics of the export article may differ more or less from those of the article sold on the home market;
- (e) the domestic price and the export price do not comprise the same freight, insurance or other charges;
- (f) the domestic price includes certain taxes or duties which the product is exempted from when exported.

For some of these factors, as those under point (e) and (f), adjustments can be based on concrete documentation. Other factors may be used by the exporters as arguments for price differences more or less at their own discretion. Therefore, to prevent abuse, the allowances claimed for such factors must to some extent be subject to the judgment of the investigating authority.

The process of making prices comparable is probably one of the most difficult problems in dumping cases. Therefore, it would be desirable if practical guidelines could be elaborated.

As regards so-called indirect dumping we support the views expressed in provision 10 to the United Kingdom draft code - namely that the export price on which the allegation of dumping is based may be compared with the comparable domestic price in either the country of consignment or the country of origin.

B. Hidden dumping by associated houses

The main problem in this regard seems to be a practical one - namely how to prove that the importer is selling at a loss (or at an unreasonably low profit margin) and that he is in some way recompensed by the exporter. In certain circumstances it will probably be justified to presume that a compensation is taking place and that accordingly the export price is unreliable. One of the prerequisites to such a presumption will be that the importer's gross profit margin is excessively low. Furthermore, the right to make such a presumption will probably have to be limited to cases where the exporter and the importer is regarded as associated houses.

In this connexion it would be useful to have a discussion of what is meant by the term "associated houses".

II. Limitation criteria

A. Percentage limit

This is understood to be a question of whether the margin of dumping should be of a certain minimum size in order to be actionable. In the opinion of the Norwegian authorities it is not desirable to lay down such a limitation criterion, nor does it seem necessary to do so in order to ensure a proper use of anti-dumping provisions.

B. Alignment of export prices

If such an alignment should at all be permitted it would probably have to be limited to cases where the exporter has cut his price in order to maintain but not increase his share of the market.

There must, however, exist a natural link between the level of prices and the injury caused or threatened to domestic producers. Therefore alignment of prices will in many cases be considered when the injury aspect is being assessed.

III. Concept of material injury

The Norwegian authorities agree that material injury (or the threat of material injury) is a fundamental and crucial condition for taking anti-dumping action. This implies that such action should not be taken unless a careful investigation of all the relevant questions has been carried out by the authorities. The most important point - and probably the most difficult one - seems to be to establish the causal relationship between dumping and injury.

It is certainly true, as it is said in the preamble to the United Kingdom draft code, that material injury cannot be defined in absolute terms and that the proper use of anti-dumping powers must in the last resort depend on critical examination and impartial judgment. It would, however, be valuable if certain guiding principles could be devised and agreed upon for the assessment of the injury aspect.

A. Possible elements to be examined in this context: profits - sales - market share - employment

The circumstances vary considerably from case to case. It would, therefore, be difficult to lay down precise rules of procedure which would not at the same time involve an undue rigidity of treatment. As a general approach we would say that all those elements indicated above - and others as well - should be examined. The aim should be to get an exact description of the situation of the domestic industry.

B. Concept of threat of material injury

The Norwegian authorities support what is said on this item in provision 14 to the United Kingdom draft code. Because of the difficulty of proving that there exists a situation of threat of material injury there is real danger that a finding of threat of material injury is based only on allegation or remote possibility. The investigating authorities must be aware of this danger and make efforts to secure that the standards are maintained.

C. Concept of retardation of establishment of industry

It seems to be a both natural and important prerequisite to a finding of retardation of establishment that there exists concrete and specified plans for building a new industry and that the retardation is clearly attributable to the dumping.

D. Concept of retardation of development of an industry

The idea that retardation of development of an industry may justify anti-dumping action seems to be consistent with the two other aspects of the injury criterion - retardation of establishment and injury to an established industry. The question of retardation of development has a special bearing on small domestic industries for which new investment and increased production would lead to more efficient use of resources. As regards relatively big and well established industries a more careful investigation should be made whether there is sufficient justification for further development.

It must also in this respect be recognized that there is a danger that the judgment is based only on allegations or on other rather superficial grounds. There should exist real plans for development and it must be clearly established that the retardation is due to the dumping.

IV. Sporadic or intermittent dumping

The question of how to deal with sporadic dumping seems to require special attention. The main problem is probably that a dumping investigation according to the so-called pre-selection system on the basis of complaints from domestic producers will generally take too long to deal effectively with this sort of dumping.

Another problem is that it will sometimes not be possible to find a sufficient basis for price comparison because it may well happen that the goods in question are no longer sold either on the domestic market or to third countries.

There seems on the other hand also to be strong arguments against devising special rules for dealing with sporadic dumping. The most obvious is probably that sporadic dumping is not immediately distinguishable from cases of more persistent dumping. It would therefore probably be desirable if sporadic dumping could be dealt with by means of provisional measures or by expanding the right to take such measures. In cases of sales of goods out of fashion or out of season it would perhaps be necessary to moderate the claims as to both the procedure and the criteria of dumping and material injury.

V. Definition of industry

A. Product coverage

It will certainly be very difficult to devise special definitions for the product coverage of the term industry. The investigating authority must probably decide in each case upon the definition of the product, the fabrication of which can be accepted as constituting an industry. The question must in some way or other be considered in the light of the proportion which the manufacture of the article constitutes of the total production of the domestic producers.

For practical reasons it must also be possible to identify the product in terms of production resources, profit, sales, etc.

B. Geographical coverage

In the Norwegian view judgment of material injury should normally relate to the total national production of the commodity concerned or a major proportion of the national production.

It must, however, also be recognized that in special circumstances a more narrow definition might be justified. This question will naturally first and foremost arise in case of widespread national markets.

Whether the term industry should be extended in case of an integration area to cover the whole industry in the area will probably to a great extent depend on the agreement between the countries concerned and the degree of integration aimed at.

IX. International procedures

The Norwegian authorities believe that it is impractical to provide for participation by international organizations in the application of national anti-dumping laws in individual cases. We, however, support the idea expressed by the United States that "it would be fruitful to explore means for establishing regular procedures for international consultation regarding the application of national anti-dumping laws and for evaluating the conformity of such application to any international agreement".

X. Third country dumping

The Norwegian anti-dumping legislation does not provide for anti-dumping action on behalf of third countries. The Norwegian authorities are, however, willing to explore the possibility of establishing such provisions in the light of what might be agreed upon in an international code.

The views expressed on third country dumping in the United Kingdom draft code seem in general reasonable.

XI. Countervailing duties

The Norwegian authorities hold the view that complaints of export subsidization should generally be treated on the same lines as applications for anti-dumping action. Thus material injury should also be a fundamental prerequisite to the imposition of countervailing duties.

As for other questions relating to countervailing duties reference is made to the report from the Group of Experts.

In the opinion of the Norwegian authorities it would be desirable if an international agreement could also include provisions on countervailing duties.

XII. Other

No special remarks.

XIII. Possible international agreement

A. Need for agreement

The national anti-dumping provisions and the application of these provisions have hitherto varied rather much. Therefore the Norwegian authorities support the idea of an international agreement with a view to arriving at more uniform standards of procedure and judgment.

In order to fulfil the intention of such an agreement it would probably be necessary to establish some form of international procedure to review the application of national anti-dumping laws under the agreement, such as indicated under item IX.

B. Form of agreement

An international agreement might take the form of either

- (1) replacing Article VI of the GATT,
- (2) an interpretative or a supplementary note to Article VI and part of the General Agreement or
- (3) an independent agreement.

The Norwegian authorities would prefer that the agreement be conceived of as an interpretation or a supplement to Article VI and as part of the General Agreement.