

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

Addendum

Comments by Japan on Items I-V, IX-XI and XIII

At the meeting of the Group on Anti-Dumping Policies on 10-11 May 1966, member governments were invited to submit their comments on items I-V and IX-XIII of the checklist. The following are the Japanese comments. They are made without prejudice to the final position to be taken by the Japanese Government.

I. Concept of dumping

A. Price discrimination

1. The price discrimination should be taken to mean the difference between the export price and the price of the like product in the domestic market of the supplier. To ensure that the two prices are genuinely comparable, due allowance should be made in each case for difference in conditions and terms of sale and other differences affecting price comparability. Provision 9 of the United Kingdom Draft Code provides a useful guideline for relevant elements to be considered in making such adjustment.

2. When there are no comparable domestic prices, e.g., when there are no open sales in the domestic market, price discrimination should be determined by comparison with either of the alternatives provided for in Article VI:1(b)(i) and (ii) of the GATT.

B. Hidden dumping by associated houses

For hidden dumping of goods for resale by associated houses, the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer. (See note 1 on paragraph 1 of Article VI of GATT.)

II. Limitation criteria

A. Percentage limits

Where the margin of dumping is small, though such dumping remains actionable, it is desirable to ignore the margin and to refrain from taking anti-dumping measures in the actual administration of the national anti-dumping legislations. It seems, however, impracticable to attempt to agree, in the international code, on the percentage of margin, below which the price discrimination is to be ignored.

B. Alignment of export prices

This question is closely related to the question of material injury. Should alignment of export prices involving price discriminations cause the material injury to the domestic industry, alignment of export prices as such does not constitute a justifiable reason for not permitting anti-dumping actions.

III. Concept of material injury

A. Possible elements to be considered

In assessing the material injury to the domestic industry, a particular emphasis should be put on whether there has been a substantial reduction in the turnovers, profits and the market share of the industry concerned. Additional factors, such as capacity utilization, reduction of employment, etc., should also be taken into account. All these elements should be considered as a whole, and there should also be a clear relation between the dumped imports and the injury.

B. Threat of injury

A finding of threat of material injury should be based on evidence and not merely on allegation, conjecture or remote possibilities. The threat must be clearly foreseen, substantive and imminent. The illustrated case of the threat of material injury in Provision 14 of the United Kingdom Draft Code as such does not seem to justify a finding of threat of material injury. A finding of threat of material injury should be permitted only when the threat has become more tangible and real, for example, in the case where export contracts have been concluded involving substantially increased quantities of the goods at dumped prices.

C. Retardation of establishment of industry

D. Retardation of development of industry

The concept of "retardation" should only be applied to infant industries. The criteria on which a finding of injury (i.e. a finding of whether there has been a "retardation" or not) to such industries is to be based should be somewhat relaxed as compared with the criteria in A above.

IV. Sporadic or intermittent dumping

This sort of dumping can be dealt with under the normal procedure, and there is no need to provide specifically for retroactive application of duties on such dumping.

V. Definition of industry

A. Product coverage

The term "domestic industry" should be interpreted as the domestic producers as a whole of the goods in question. Further, a finding of material injury should not be made in relation to a segment of the industry producing the like article considered in isolation unless the segment can be separately identified from the whole industry in terms of the production process, profits, etc.

B. Geographic coverage

1. In assessing material injury, the domestic industry should be identified as nation-wide in scope. As stated in Provision 12(a) of the United Kingdom Draft Code, the domestic industry should be interpreted as referring to the domestic producers whose collective output of the goods constitutes a major proportion of the total national production of those goods.

2. Where goods circulate freely within an integrated region just as in one nation (as in case of a customs union), a finding of material injury should be made in relation to the industry of the integrated region as a whole of the goods in question.

IX. International procedures

1. It is desirable to consider the establishment of a procedure within the GATT for the review of national anti-dumping policies.

2. As stated in the comments of the Japanese Government (TN.64/NTB/W/4), a provision should be made that the government of the importing country should enter into bilateral consultations without delay upon request by the government of the exporting country concerned should disputes have arisen in connexion with the application of provisional action, the imposition of final anti-dumping duties, the appropriate duration of such duties, etc.

X. Third country dumping

Anti-dumping measures on behalf of a third country may be taken only when the causal relationship could be clearly established between dumped imports and the material injury suffered by the domestic industry in the third country. A finding of material injury for such cases should be based on the same strict criteria as set out in III and V above.

XI. Countervailing duties

The Group may wish to consider, if necessary, the question of countervailing duties at a later stage following the completion of study regarding anti-dumping procedures.

XIII. Possible international agreement

A. Need for agreement

There is no need here to elaborate on the necessity of an international agreement on anti-dumping policies.

B. Form of agreement

As the discussions of the Group on Anti-Dumping Policies are conducted as part of the Kennedy Round trade negotiations to avoid nullification of the effect of tariff reductions by arbitrary application of national anti-dumping legislations, the provisions of the international code to be agreed on need to be reflected in the national anti-dumping legislations.