

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers

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Group on Anti-Dumping Policies

## ANTI-DUMPING CHECKLIST

### Comments by Denmark on Items I-V and IX-XI

#### I.A. Concept of dumping - Price discrimination criteria

The basis for determining the margin of dumping should be the prices actually charged by an exporter for sales to the home market and for sales to the importing country. In normal practice, these prices will not be directly comparable, either because they do not comprise identical cost elements or because they do not comprise certain cost elements to the same degree. The two prices should therefore be adjusted so as to render them comparable. The Danish authorities find Provision 9 of the British Draft Code on this point to be satisfactory and to be in conformity with Article VI of the GATT.

It would be desirable, however, to include in the Code rules about the basis of such comparisons which in principle should be made, wherever possible, between the price ex works for home-market sales and for export sales, so that price adjustments can be made to ensure comparability in cases where goods are not sold on ex works terms.

One of the factors to be taken into consideration in comparisons of export prices and an exporter's home-market prices under Provision 9 is the cost of freight. The position of freight costs in such calculations was discussed by the Group on Anti-Dumping Policies in January 1966 - see GATT document TN.64/NTB/W/6, item I(6), according to which the Group appears to have been in agreement about the desirability of taking up the question of freight dumping for more detailed examination.

It has been maintained by United States authorities that goods could be exported to Europe without the possibility of any lawful anti-dumping action being taken as long as the domestic price in the United States was equal to or below the price charged in European ports. In certain cases, a so-called alignment might even be added to the European market prices without triggering off any anti-dumping duty. In the view of the United States authorities, freight subsidies or sub-normal freight rates for certain goods under governmental subsidy arrangements to reduce the cost of transportation of such goods would merely promote competition and are intended to prevent geographical monopolies.

The Danish authorities cannot accept the United States views and find that there is every reason to take up freight dumping or freight subsidies for export of certain goods or consignments for more detailed discussion within the Working Group of GATT. It should be noted, however, that the Danish authorities suggest that only concrete cases of freight subsidies should be discussed - not general problems arising in connexion with subsidies to shipping as GATT is hardly the proper forum for such general discussions.

Freight costs will represent a considerable part of the comparable ex works price proposed above. The Danish authorities find that it will be in conformity with Article VI of GATT to use normal freight costs, and not artificially reduced freight costs, for the calculation of the ex works price. If this criterion is applied, the ex works price calculated will be lower than the normal price referred to in Article VI; this means that one of the conditions for imposing an anti-dumping duty will have been fulfilled.

#### I.B. Concept of dumping - Hidden dumping by associated houses

In cases where the invoice price is unacceptable as a basis of comparison because of association between the exporter and importer, the re-sale price paid by an independent buyer may be used as a basis of comparison, cf. Provision 8(ii) of the Draft Code.

If imported goods are not re-sold but used in the production of articles made by, for instance, a factory affiliated to the exporter, costs should be calculated ad modum Article VI:1(b)(ii) of GATT.

#### II. Limitation criteria

Special criteria which restrict the use of the anti-dumping provisions contained in Article VI or in the Draft Code, will either be contrary to GATT's Article VI, if they prevent an anti-dumping duty from being imposed, even if material injury has been caused to a domestic industry, or be superfluous if they are formulated in such a way as to be applicable only in cases where material injury is unlikely to arise. Hence, the Danish authorities do not find restrictions in terms of percentages or in terms of alignment of export prices to be applicable as criteria for discussions as to whether dumping is causing or threatening to cause material injury to a domestic industry. As far as "alignment of export prices" is concerned, the Danish authorities are in agreement with the views expressed at the meeting of the Working Group on 26-27 January 1966, cf. document TN.64/NTB/W/6, re I(2), second paragraph.

### III.A. Concept of material injury - Possible elements to be examined

The Danish authorities accept Provision 13 of the Draft Code and the Rationale following that Provision. In determining whether material injury has been caused, all relevant factors should be examined. It will not be enough to look at, for instance, the domestic industry's sales volume or market share which might be maintained by means of price reductions that would result in a loss in the long run. An investigation of changes in the net returns of the domestic industry would probably be the best way of ascertaining whether material injury has been caused, but in any such investigation efforts should be made to ascertain - as pointed out in the last paragraph of the Rationale following Provision 13 - that there is an unmistakable causal relationship between the sale of dumped goods and a simultaneously demonstrated material decline in net returns.

### III.B. Concept of material injury - Concept of threat of material injury

In the Danish view, the requirements for proof should be made strict when only a threat of injury exists.

### III.C Concept of material injury - Concept of retardation of establishment or and D. development of an industry

Strict requirements for proof should be prescribed in cases where dumping is alleged to prevent or retard the establishment or development of a domestic industry. Evidence must be produced to demonstrate that effective steps have been taken to initiate a production of the dumped goods, for instance by erecting a factory or acquiring machinery specially adapted to the production intended.

### IV. Sporadic or intermittent dumping

The question of sporadic dumping should be viewed in connexion with the question of imposing anti-dumping duty with retroactive force and the question of provisional anti-dumping duty. The following conditions must be fulfilled to justify a retroactive anti-dumping duty in the case of sporadic dumping: only one consignment of dumped goods must have been delivered; it must have been large enough to cause material injury; the sale must not have come to the knowledge of domestic producers until after delivery of the goods in the importing country. In practice, these conditions will, as a rule, not all have been fulfilled. Domestic producers may normally submit a complaint and at least a provisional anti-dumping duty may be imposed before there will have been time to clear through the customs a quantity of dumped goods which is large enough to cause injury. This is true especially in the case of the seasonal price movements referred to in item IV.A.; such movements will eo ipso be foreseeable.

Hence, there should be no need to include rules on sporadic dumping in the Code.

V.A. Definition of industry - Product coverage

As a result of differences in production, it is only in exceptional cases that goods imported at dumping prices will be completely identical with those produced by a domestic industry. In determining whether dumped goods cause material injury to a domestic industry account must therefore also be taken of the production of like domestic goods, provided that these are so closely related to the imported goods as to be acceptable as substitutes for them. It will probably be of no avail to attempt to formulate a general definition of "industry". The crucial question is whether there is an existing or planned domestic production which can be injured by such dumping. The production to which injury is caused must, however, represent a considerable share of the importing country's production of the goods concerned.

V.B. Definition of industry - Geographic coverage

"Domestic industry" should normally be understood to comprise all manufacturers within a particular sector of industry in the country concerned. It may be useful, however, as suggested in Provision 12(c) of the Draft Code, to allow definitions of industry on a regional basis in countries which, like the United States, cover a whole continent.

IX. International procedures

The Danish authorities have no comments.

X. Third country dumping

The Danish authorities accept the rules proposed under item K in the Draft Code.

XI. Countervailing duties

In view of the fact that the ~~CONTRACTING~~ PARTIES have gradually come to include nations whose institutional structure of foreign trade is based on widely different principles, the Danish authorities find it preferable that the Draft Code should contain rules not only for anti-dumping duties but also for countervailing duties. It is also found desirable that complaints, whether of dumping or subsidies, should be treated according to similar detailed rules. Such additional rules could probably be incorporated in the Draft Code without any difficulty.