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GENERAL AGREEMENT ON TARIFFS AND TRADE

Sub-Committee on Non-Tariff Barriers

Group on Anti-Dumping Policies

POSSIBLE ELEMENTS TO BE CONSIDERED FOR INCLUSION IN AN ANTI-DUMPING CODE

Revised List

In document TN.64/NTB/W/13 a draft list of possible elements to be considered for inclusion in an anti-dumping code was circulated. This list was examined at a meeting of the Group on Anti-Dumping Policies on 11-14 October 1966. In the light of the views expressed at the meeting and comments received thereafter from a number of governments, the secretariat has prepared the following revised list of elements, which will be examined by the Group at a meeting to be held at a date to be set in consultation with delegations.

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1. The imposition of an anti-dumping duty is a measure, taken only under the circumstances provided for in Article VI of the General Agreement. The following provisions govern the application of this Article.

A. DETERMINATION OF DUMPING

2. (a) A product is to be considered as being introduced into the commerce of another country at less than its normal value if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. The comparison shall be made on the basis of a specific export sale or sales of the seller with a home sale or sales of the same seller where such sales exist.

(b) The term "like product" shall be interpreted to mean a product which is identical or which is essentially the same the only difference being minor adaptations, e.g. to accommodate different tastes or to meet statutory requirements.

(c) In the case where goods are not imported directly from the country of origin but are consigned to the country of importation from an intermediate country, the price at which the goods are sold from the country of consignment to the country of importation shall normally be compared with the comparable price in the country of consignment. However, comparison may be made with the price in the country of origin if, for instance, the goods are merely transshipped from the country of consignment, or if the goods are not produced, or if there is no comparable price for them, in the country of consignment, or if it appears that the transshipment is designed to evade comparison with the price in the country of origin.

(d) When there are no sales in the ordinary course of trade in the domestic market or when such sales do not permit because of the particular market situation a proper comparison, the margin of dumping shall be determined preferably by comparison with a comparable export price which could be the highest export price to any third market but should be a representative price, or with the cost of production in the country of origin plus a reasonable allowance for administrative and selling costs and profits. /The allowance for profit shall not exceed the profit normally realized on sales of similar goods in the domestic market of the country of origin./

(e) In cases where it appears to the authorities concerned that the export price is unrealiable because of association or any compensatory arrangement between the exporter and the importer, the export price may be established on the basis of the price at which the goods are resold to an independent buyer by the importer or persons related to him.

(f) In order to obtain a fair comparison of prices /what is determined to be/ due allowance shall be made in each case for /all/ differences affecting price comparability. Among the factors to be taken into account are differences in quantity and quality, physical characteristics of the product, level of trade, transportation costs, conditions and terms of sale, taxation, credit terms, guarantees, warranties, technical assistance, advertising and other selling costs, commissions, research and development costs, discounts and rebates given in respect of any commercial consideration including quantity, cash payments, continuity of orders etc. In cases referred to in paragraph 2(e) allowance for costs incurred by the importer between importation and resale should also be made.

B. DETERMINATION OF MATERIAL INJURY

3. Determination of material injury

(a) A finding of material injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the main cause or threat of material injury to a domestic industry or that they materially retard the establishment of such an industry. The action shall in all cases

be based on positive findings and not on mere allegations of hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of this must be shown, for example that the plans for a new industry have reached a fairly advanced stage, a factory is being constructed or machinery has been ordered.

(b) The assessment of injury - that is the assessment of the effects of the dumped imports on the industry in question - shall be based on examination of all factors having a bearing on the state of the industry in question, e.g. criteria such as: turnover, profits and market share; sales relative to total sales of the product; employment; prices; volume of dumped and other imports; utilization and development of capacity of domestic industry; /the existence of monopoly or cartel conditions/. /Among the criteria set out above, particular emphasis should be put on turnover, profits and market share./

(c) /As indicated in (b) all factors having a bearing on the state of the industry shall be examined in determining material injury and no one or several factors can be decisive in all cases. However, in order for injury to be material there must be a substantial loss of gross revenue contributable to the dumped imports, i.e. a reduction in returns that is important and significant in relation to the total returns obtained by an industry from its sales and a substantial reduction of the market share of the domestic industry./

(d) In order to establish the causal relationship between the state of the industry and the dumped imports, all other factors which, individually or in combination, may be adversely affecting the industry must be examined, e.g. the volume and prices of undumped imports of the goods in question, competition between the domestic producers themselves, contraction in demand due to substitution of other products or changes in consumer tastes, etc.

(e) /Without prejudice to paragraph 3 (a-d), imports sold at less than normal value shall not normally be considered as causing or threatening material injury if: (i) the delivered, duty paid price of the exported product is no lower than the comparable price for the like product prevailing in the importing country and (ii) the exporter of the product does not increase or threaten to increase his share of the market in the importing country./

(f) The effect of the dumped imports shall be assessed in relation to the domestic production and sales of the like or similar goods when this can be separately identified in terms of the production process, the producers' realizations, profits, etc. When the domestic production of the like or similar goods has no separate identity in these terms the effect of the dumped imports must be assessed in relation to the production of the group or range of products, which includes the like or similar goods, for which the necessary information can be provided.

4. Special provisions relating to threat of injury

(a) A finding of threat of material injury shall be based on evidence and not merely on allegation, conjecture or remote possibility. The change which would create a situation in which the current dumping would cause material injury must be clearly foreseen, substantive and imminent.[1]

(b) /Because of the speculative nature of forecasts and the necessarily wide margins of error involved in predicting future results, governments shall apply to complaints based on "threat of injury" more rigid standards than might be considered sufficient to establish that injury has already taken place./ With respect to cases where material injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care.

5. Definition of industry

(a) In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like or similar goods or to those of them whose collective output of the goods constitutes a substantial proportion of the total production of those goods in a given custom territory, except that:

(i) when producer(s) are importer(s) of the alledgedly dumped goods the industry may be interpreted as referring to the rest of the producers;

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[1] One example, though not an exclusive one, is that there is convincing circumstantial evidence that the foreign suppliers intend to export in the immediate future substantially increased quantities of the goods at dumped prices, that there is no reason why they should not succeed in this and that they have every incentive to do so.

Alternative I

(ii) Where, for the production in question, a customs territory can be divided into two or more competitive markets - e.g. because of high transport costs - the industry within each such market may be considered as a separate entity. In this connexion, the term "industry" should be defined to cover all the producers within a given customs territory who sell their products in a market in competition with each other and with the imported product.

Alternative II

(ii) The industry may be interpreted as referring to the producers in an area or areas within a single customs territory if:

(1) they sell all or most of their production of the goods in question in that area(s);

(2) all or most goods in question produced domestically elsewhere are not sold in the area(s).

(b) In integration areas, where the integration has reached such a level that they have the characteristics of a single, unified market, the industry shall be identified as covering the whole of the area unless it can be divided into separate competitive markets.

(c) /When production of the like or similar goods cannot be distinguished from the production of a group or range of nearly similar goods in terms of the production process, realizations, profits, etc., the production of the group or range of goods must be considered as the production with which the imports compete, i.e. as the industry./

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

6. Initiation of investigations

Investigations shall normally be initiated only on the basis of application by the industry[1] /(including workers or their authorized representatives)/ affected, supported by evidence both on dumping and material injury resulting

[1] As defined in paragraph 5(a).

therefrom. /The authorities concerned shall, in special circumstances, be able to initiate themselves anti-dumping investigations./ Evidence both on dumping and on material injury resulting therefrom shall also be required before investigations are initiated by the authorities concerned.

7. Subsequent consideration

(a) Upon initiation of an investigation and thereafter the evidence of both dumping and material injury shall /, to the extent feasible and appropriate,/ be considered simultaneously by the authorities concerned.

(b) An application shall be rejected and any subsequent investigation shall be terminated promptly after the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. This shall normally be the case when the margin of dumping or the volume of dumped imports is negligible.

(c) An anti-dumping investigation shall not hinder the normal procedures of customs clearance.

8. Submission of evidence

(a) The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence and rebuttal evidence that they consider useful in respect to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.

(b) Any interested party should have the opportunity to examine all information that is relevant to the presentation of his case and that is not confidential as defined in (c) below and that is used by the authorities in an anti-dumping investigation. Ample opportunity shall be given to prepare presentations on the basis of this information. Such information on both price and injury and other relevant material submitted by the complainant shall be communicated to the exporters concerned and to the governments of the exporting countries.

(c) All information which is by nature confidential (e.g. if disclosure would be of significant competitive advantage to a competitor or if disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation shall be treated as strictly confidential by the authorities concerned who shall not reveal it, without specific permission, to other interested parties.

(d) However, if the authorities concerned find that a request for confidentiality is not /fully/ warranted, they would be free to disregard such information, which cannot be otherwise verified /from non-confidential sources/, if its supplier is either unwilling to make it public or to authorize its disclosure in generalized or summary form.

(e) In order to verify information provided or to obtain further details, the authorities may carry out investigations, in other countries, as required, provided they obtain the agreement of the firms concerned and unless representatives of the government of the exporting country object.

(f) Once the competent authorities are satisfied that there is sufficient evidence, (see paragraph 2-7 above) to justify a full anti-dumping investigation representatives of the exporting country and the exporters concerned shall be notified and a public notice may be published.

(g) Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned /shall/ /may/, on request, if no objections are raised provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties.

(h) The authorities concerned shall notify representatives of the exporting country and the directly interested parties of their decisions regarding imposition or non-imposition of anti-dumping duties, indicating the reasons for such decisions and the criteria applied, and shall, unless there are special reasons against doing so, make public the decisions.

(i) Authorities shall make public, at the time of their application, the justification for the imposition of any provisional measures as provided in paragraph 11.

D. IMPOSITION OF ANTI-DUMPING DUTIES

9. Application of anti-dumping duties

(a) The decision whether to apply an anti-dumping duty or not in cases where all requirements for the application are fulfilled remains with the competent authorities of the importing country. /The application shall be permissive in all participating countries./

(b) Anti-dumping duties, in the appropriate amounts in each case, shall be imposed on a non-discriminatory basis on all imports from all sources of the goods in question found to be dumped and to be causing or threatening to cause material injury.

(c) /Normally anti-dumping duties should be imposed only on the named supplier of the dumped imports. If several suppliers from the same country are involved, duties may be imposed only on those imports of the goods in question from the country concerned which are dumped. If several suppliers from the same exporting country are involved and the importing country does not have access to provisional measures, anti-dumping duties may be imposed on all imports of the goods in question from the exporting country concerned, it being understood that for those goods which can be shown not to have been dumped the duties will be reimbursed./

(d) /If several suppliers from one or more countries are involved, anti-dumping duties may be imposed on all imports from all countries of the goods in question found to be dumped and to be causing, or threatening to cause, material injury, the duty being equivalent to the amount by which the export price is less than an established basic price, not exceeding the lowest normal price in any of such supplying countries where normal conditions of competition are prevailing and not exceeding the lowest price at which the domestic industry is considered not to suffer material injury./

(e) The amount of the anti-dumping duty must not exceed the margin of dumping as established under paragraph 1 above. Therefore, if subsequent to the application of the anti-dumping duty it can be shown that the duty so levied exceeds the actual dumping margin, the amount in excess of the margin will be reimbursed. It is desirable that the duty be less than the margin, if such lesser duty would be adequate to remove the material injury or the threat of material injury to the domestic industry.

(f) When the industry has been interpreted as referring to the producers in a certain area, as referred to in paragraph 5(a)(ii) and (b), anti-dumping duties should only be definitively collected on the goods in question consigned to that area. /This provision shall be carried into effect by the authorities concerned to the extent that it is feasible for them to do so within their laws and constitutions./

10. Duration of the duties

(a) Anti-dumping duties shall remain in force only as long as they are necessary in order to counteract dumping which is causing or threatening to cause material injury.

(b) The authorities concerned shall review the need for the continued imposition of the duty, where warranted, if interested suppliers or importers of the product so request and submit information substantiating the need for review.

11. Application of provisional measures

(a) Provisional measures may be taken only in cases where there is prima facie evidence of dumping and that the supply of the allegedly dumped goods which would otherwise be imported during the period of investigation would cause material injury. The criteria to serve as the basis for a judgment on the price and injury aspects shall include the criteria referred to in sections A and B.

(b) Provisional measures may take the form of a provisional duty or, preferably, a security - by deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. /Withholding of appraisal shall also be regarded as an appropriate provisional measure provided that the estimated amount of the duty be indicated and as long as it is subject to the same qualifications as other provisional measures./

(c) The imposition of provisional measures shall be limited to as short a period as possible. /More specifically, provisional measures shall not in principle be imposed for a period longer than six months but may be extended in exceptional circumstances./

(d) /The provisional measures shall only take effect from the date of the decision to apply them,/ /except in cases where there is association between the exporter and the importer./

12. Retroactive application of duties

(a) Anti-dumping duties shall be levied from the time when the final decision enters into force and shall not apply retroactively except in cases where, and for the period for which, provisional measures have been applied.

(b) If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, /bond or security, or the amount estimated for the purpose of the bond/, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty, the difference shall be reimbursed.

E. THIRD COUNTRY DUMPING

13. Third country dumping

(a) Application for anti-dumping action on behalf of a third country shall be made by the government of the third country requesting action.

(b) Such applications shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing or threatening material injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

(c) The authorities of the importing country in considering such applications shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the particular market where the alleged dumping is taking place or even on the industry's total exports.

(d) The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the CONTRACTING PARTIES seeking their approval for such action shall rest with the importing country.

F. INTERNATIONAL PROCEDURES

14. International consultation

/The signatories to this convention shall report to the CONTRACTING PARTIES annually on the administration of their anti-dumping laws, giving full details on the cases decided by them and reasons therefor. Each signatory shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another signatory with respect to any matter affecting the operation of this convention. The CONTRACTING PARTIES may, at the request of a signatory, consult with any signatory or signatories in respect of any matter for which it has not been possible to find a satisfactory solution through bilateral consultation./

G. FINAL DISPOSITIONS

15. /The signatories to this convention shall take, not later than six months after ....., all the necessary steps, of a general or particular character, to ensure the conformity of their legislation, regulation and administration procedures with the provisions of this convention./