

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers

Group on Anti-Dumping Policies

DRAFT ANTI-DUMPING CODE

Considering that Ministers at their meeting held at Geneva on 16-21 May 1963, agreed that a significant liberalization of world trade is desirable, and that the comprehensive trade negotiations, the 1964 Trade Negotiations, which were opened on 4 May 1964 for this purpose, shall deal not only with tariffs but also with non-tariff barriers;

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that action may be taken against dumping only if it causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Considering that it is desirable to provide for equitable full and open procedures as the basis for a fair and full examination of anti-dumping cases;

Being desirous of interpreting the provisions of Article VI of the General Agreement and of elaborating its application in order to provide greater uniformity and certainty in their implementation;

The signatories to this Code agree that:

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 dumped, i.e. 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.

(b) For purposes of this Code the term "like product" shall be interpreted to mean a product which is identical, i.e. alike in all respects to the exported product, or in the absence of such a product, another product which, although not alike in all respects, has physical characteristics close to those of the exported product.

(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 example, the goods are merely trans-shipped from the country of consignment, or such goods are not produced, or there is no comparable price for them, in the country of consignment.

(d) When there are no sales of the like product in the ordinary course of trade in the domestic market or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined 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, selling and other costs and profits. As a general rule, the allowance for profit shall not exceed the profit normally realized on sales of goods of the same general category in the domestic market of the country of origin.

(e) In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be established on the basis of the price at which the goods are first resold to an independent buyer, or if the goods are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

(f) In order to obtain a fair comparison of prices what the authorities determine to be due allowance shall be made in each case for all appropriate 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,

the date it was made, 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 and continuity of orders. In cases referred to in paragraph 2(e) allowance for costs incurred between importation and resale should also be made.

B. DETERMINATION OF MATERIAL INJURY

3. Determination of material injury

(a) A determination of material injury shall be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause or threat of material injury to a domestic industry or of material retardation of the establishment of such an industry. That the industry may be in a depressed condition due to factors other than dumping is irrelevant in this context. The determination to be made is whether the dumped imports, taken by themselves, are, or threaten to be, the principal cause of a material deterioration of the condition of the industry. The determination shall in all cases be based on positive findings and not on mere allegations or hypothetical possibilities. In the case of retarding the establishment of a new industry in the country of importation, convincing evidence of the forthcoming establishment of an industry 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 evaluation of injury - that is the evaluation 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, such as: development and prospects with regard to: turnover; profits; prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country); market share; export performance; employment; volume of dumped and other imports; utilization of capacity of domestic industry; productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance. /However, as long as the domestic industry maintains its turnover and market share, it is normally considered that the dumped imports are not causing material injury to the industry./

(c) In order to establish whether dumped imports have caused material injury, 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.

(d) The effect of the dumped imports shall be assessed in relation to the domestic production of the like goods when this can be separately identified in terms of such criteria as the production process, the producers' realizations, profits. When the domestic production of the like goods has no separate identity in these terms the effect of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like goods, for which the necessary information can be provided.

4. Special provisions relating to threat of injury

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

(b) 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 goods or to those of them whose collective output of the goods constitutes a substantial major proportion all or almost all of the total production of those goods in a given custom territory, except that:

¹One 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.

(i) when producers are importers of the allegedly dumped goods the industry may be interpreted as referring to the rest of the producers;

(ii) Alternative I

When 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 ordinarily be defined to cover all the producers within such a market if they sell all or almost all of their production of the goods in question in that market, provided also that none or almost none of the goods in question produced elsewhere in the customs territory are sold in that market.

(ii) Alternative II

For the production in question a customs territory may, in exceptional circumstances, be divided into two or more competitive markets - for example, because of high transport costs - and the industry within each market regarded as a separate entity, if all the producers within such a market sell all or almost all of their production of the goods in question in that market, and none, or almost none, of the goods in question produced elsewhere in the customs territory are sold in that market, or if there is an equally economically justifiable basis for identifying a separate industry.

(b) Where two or more countries have reached such a level of integration that they have the characteristics of a single, unified market, the industry shall be identified as covering the whole of the area without prejudice to the provisions of paragraphs 5(a)(i) and (ii).

(c) The provisions of paragraph 3(d) shall be applicable to paragraph 5.

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

6. Initiation of investigations

(a) Investigations shall normally be initiated upon a request on behalf of¹ the industry¹ affected, supported by evidence both of dumping and of material injury resulting therefrom or threat thereof or of material retardation in the establishment of a new industry. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have evidence both on dumping and on material injury resulting therefrom.

(b) For an initial period of ... years the authorities of those signatories who require legislative action to conform to this Code and only for those products for which there is a history of injurious dumping, may institute an investigation into threat of material injury, before there is evidence of current dumping.7

7. Subsequent consideration

(a) Alternative I

The evidence of both dumping and material injury shall be considered simultaneously.

(a) Alternative II

The evidence of both dumping and material injury shall be considered simultaneously not later than as from the earliest date on which provisions¹ measures may be applied, except in the cases provided for in paragraph 11(c) in which the authorities accept the request of the exporter or the importer.

(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 material injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports or the injury is negligible.

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

¹As defined in paragraph 5(a).

8. Submission of evidence

The following rules in so far as they relate to determination of dumping do not apply to a country which makes determination of dumping subject to appeal to an arbitral body or court, in accordance with Article X:3(b) of the General Agreement.

(a) The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all 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) The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 8(c), and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

(c) All information which is by nature confidential (for example, 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.

(d) However, if the authorities concerned find that a request for confidentiality is not warranted and if its supplier is either unwilling to make it public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from non-confidential sources that the information is correct.

(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 provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.

(f) Once the competent authorities are satisfied that there is sufficient evidence to justify a full anti-dumping investigation representatives of the exporting country and the exporters and importers known to be 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 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. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

(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 and imposition of provisional measures, 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) In complying with the provisions of this paragraph the authorities shall not be precluded from reaching preliminary determinations, affirmative or negative, expeditiously. In cases in which any interested party withholds the necessary information, a final determination, affirmative or negative, may be made on the basis of the facts available.

9. Price undertakings

If the exporters concerned undertake during the examination of a case, to revise prices or to cease to export the goods in question, and the authorities concerned accept the undertaking, the investigation of material injury shall nevertheless be completed if the exporter so desires or the authorities concerned so decide. If a determination of no injury or threat of it is made, the undertaking given by the exporter shall automatically lapse unless the exporter states that it shall not lapse. The fact that exporters do not offer to give such undertakings during the period of investigation, or do not accept an invitation made by the investigating authorities to do so, shall in no way be prejudicial to the consideration of the case.

D. IMPOSITION OF ANTI-DUMPING DUTIES

10. Imposition, levying and collecting of anti-dumping duties

(a) The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. The imposition shall be permissive in all participating countries. 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.

(b) When an anti-dumping duty is imposed in respect of the goods in question, such anti-dumping duty shall be imposed, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such goods from all sources found to be dumped and causing material injury. Normally, the authorities will name the supplier or suppliers of the goods concerned. If several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

Alternative I

(c) When an anti-dumping duty is levied on an importation of dumped goods, the amount levied shall not be greater than the margin of dumping found to apply in respect of this import transaction. In exceptional circumstances, when the amount of anti-dumping duty which has been collected is greater than the margin of dumping found to apply in respect of each import transaction, the amount by which the anti-dumping duty exceeds this margin shall be refunded as quickly as possible.

Alternative II

(c) The amount of the anti-dumping duty must not exceed the margin of dumping as established under paragraph 2. Therefore, if subsequent to the application of the anti-dumping duty it can be shown / is found that the duty so levied exceeds the actual dumping margin, the amount in excess of the margin will be reimbursed.

(d) Within a basic price system the following rules shall apply provided that their application is consistent with the other provisions of this Code:

If several suppliers from one or more countries are involved, anti-dumping duties may be imposed on imports of the goods in question found to have been dumped and to be causing or threatening material injury from the country or countries concerned, the duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that for goods which are sold below this already established basic price a new anti-dumping investigation shall be carried out in each particular case, where so is demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, anti-dumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed.

(e) Anti-dumping proceedings may be terminated without imposition of anti-dumping duties upon receipt of a voluntary undertaking by the exporters to raise their prices by an amount equivalent to the duty which would otherwise be imposed or to cease to export to the customs area in question at dumped prices if the authorities concerned consider this practicable, e.g. if the number of exporters or potential exporters of the goods in question is not too great and/or if the trading practices are suitable.

(f) When the industry has been interpreted as referring to the producers in a certain area, as referred to in paragraph 5(a)(ii), anti-dumping duties shall only be definitively collected on the goods in question consigned to that area, or the exporter shall, prior to the imposition of anti-dumping duties, be given an opportunity to cease dumping in the area concerned and, if adequate assurance to this effect is promptly given, anti-dumping duties shall not be imposed, provided, however, that if the assurance is not satisfied, this alternative provision shall not be applicable/.

(g) When the determination with regard to injury is to be based on threat of injury or material retardation of the establishment of an industry, the exporter shall, prior to the imposition of the anti-dumping duties, be given an opportunity to cease dumping and, if adequate assurance to this effect is promptly given, anti-dumping duties shall not be imposed retroactively, provided, however, that if this assurance is not satisfied, this provision shall not be applicable./

11. 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 or is materially retarding the establishment of a new industry.

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

12. Application of provisional measures

Alternative I

(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 would cause material injury in the immediate future. 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.

Alternative II

(a) Provisional measures may be taken only when a preliminary decision has been taken that there is dumping.

(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 appraisement is an appropriate provisional measure provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions 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 be imposed for a period longer than three months or, on decision of the authorities concerned upon request by the exporter or importer, six months.

(d) The provisional measures shall only be applied to goods which enter for consumption after the date of the decision taken under paragraph (a), except in cases where:

- (1) there is evidence of an intention to deceive the authorities;
- (2) it appears that the importer was or should have been aware that the exporter practices dumping, either because -
 - (a) the relationship or degree of integration between the importer and the exporter is sufficiently close; or
 - (b) of other reasons determined by the authorities concerned;

and the importer should reasonably have anticipated that the dumping would prove to be injurious; or

- (3) appraisement is suspended for the goods in question for reasons unrelated to the question of dumping.

(e) The relevant and applicable provisions of paragraph 9 shall be followed in the application of provisional measures.

13. Retroactive application of duties

Anti-dumping duties shall be levied only from the time when the final decision enters into force, except that in cases in which a determination of material injury (and not merely of a threat of material injury or of the material retardation of the establishment of an industry) is made, they may be levied retroactively for the period for which provisional measures, if any, have been applied.

E. THIRD COUNTRY DUMPING

14. 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. DEVELOPING COUNTRIES

15. Developing countries

While considering the application of the provisions of the Code to imports from the less-developed contracting parties, the developed contracting parties shall have special regard to the trade interests of the less-developed contracting parties, including the problems of economic development and the need to promote their export earnings, and explore all possibilities of constructive remedies before applying any measure under the Code where it would affect the export interest of the less-developed contracting parties.

G. INTERNATIONAL PROCEDURES

16. International consultation

(a) [The signatories to this convention shall report to the CONTRACTING PARTIES annually on the administration of their anti-dumping laws, giving summaries of the cases decided by them and reasons therefor.]

(b) Signatories shall inform the CONTRACTING PARTIES of any changes in their anti-dumping laws, regulations and the administration of these laws and regulations.

(c) A special committee open to all signatories shall be established by the CONTRACTING PARTIES upon the entry into force of the Code. The committee shall meet once each year for the purpose of affording participants the opportunity of consulting on matters relating to the administration of anti-dumping systems in any participating country or customs territory as they might affect the operation of the Code and the furtherance of its objectives.

(d) (Provisions for amendments.)

H. FINAL DISPOSITIONS

17. [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.]