

GENERAL AGREEMENT ON TARIFFS AND TRADE

CONFIDENTIAL

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Sub-Committee on Non-Tariff Barriers

Group on Anti-Dumping Policies

ANTI-DUMPING CODE

Revised Draft

Delegations are asked to notify to the secretariat not later than on 10 April 1967 any technical amendments they may wish to have made in the text.

Considering that Ministers at their meeting held at Geneva on 16-21 May 1963, agreed that a significant liberalization of world trade was desirable, and that the comprehensive trade negotiations, the 1964 Trade Negotiations, which were opened on 4 May 1964 for this purpose, should 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 anti-dumping duties may be applied against dumping only if such dumping 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 and open procedures as the basis for a full examination of anti-dumping cases;

Desiring to interpret the provisions of Article VI of the General Agreement and to elaborate rules for 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, to be taken only under the circumstances provided for in Article VI of the General Agreement. The following provisions govern the application of this Article, in so far as it refers to dumping.

A. DETERMINATION OF DUMPING

2. (a) For the purpose of this Code 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) Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

(c) In the case where goods are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the goods are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the goods are merely trans-shipped through the country of export, or such goods are not produced, or there is no comparable price for them in the country of export.

(d) When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country 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 price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition 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 constructed on the basis of the price at which the imported 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 effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the third country price, the two prices shall be compared at the same level of trade, normally at the ex factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the difference in taxation, and for the other differences affecting price comparability. In the cases referred to in paragraph 2(e) allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

(g) This paragraph is without prejudice to the second supplementary provision to paragraph 1 of Article VI of the General Agreement.

¹When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriately senior level.

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 of material injury or of threat of material injury to a domestic industry or the principal cause of material retardation of the establishment of such an industry.¹ In reaching their decision the authorities shall weigh, on one hand, the effect of the dumping and, on the other hand, all other factors taken together which may be adversely affecting 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, market share, 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), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity; and restrictive trade practices. No one or several of these factors can necessarily give decisive guidance.

(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 shall be examined, for example, 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.

¹When in this Code the term "injury" is used, it shall, unless otherwise specified, be interpreted as covering cause or threat of material injury to a domestic industry and material retardation of the establishment of such an industry.

(d) The effect of the dumped imports shall be assessed in relation to the domestic production of the like goods when available data permit the separate identification of production 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. Provisions relating to threat of material injury

(a) A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the 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 major proportion of the total production of those goods, except that:

- (i) when producers are importers of the allegedly dumped goods the industry may be interpreted as referring to the rest of the producers;
- (ii) in exceptional circumstances a country may, for the production in question, be divided into two or more competitive markets and the industry within each market regarded as a separate entity, if, (for example, because of transport costs) 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 country are sold in that market, or if there exists, for other reasons, an equal degree of isolation

¹One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the goods at dumped prices.

of the producers in a certain area from the rest of the industry, provided, however, that injury may be found in such circumstances only if there is injury to all or almost all of the total production of the goods in the market as defined.¹

(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 in the entire area of integration shall be taken to be the industry referred to in paragraph 5(a).

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

C. INVESTIGATION AND ADMINISTRATION PROCEDURES

6. Initiation and subsequent consideration of investigations

(a) Investigations shall normally be initiated upon a request on behalf of the industry¹ affected, supported by evidence both of dumping and of injury resulting therefrom for this 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) Upon initiation of an investigation and thereafter, the evidence of both dumping and material injury should be considered simultaneously. In any event the evidence of both dumping and material injury shall be considered simultaneously in the decision whether or not to initiate an investigation, and thereafter during the course of the investigation starting on a date not later than as of from the earliest date on which provisional measures may be applied, except in the cases provided in 11(d) in which the authorities accept the request of the exporter or the importer.

(c) An application shall be rejected and any subsequent investigation shall be terminated promptly as soon as 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, actual or potential, or the injury is negligible.

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

¹As defined in paragraph 5(a).

7. Submission of evidence

(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 sub-paragraph (c) below, 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, because its disclosure would be of significant competitive advantage to a competitor or because its 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 of the party submitting such information.

(d) However, if the authorities concerned find that a request for confidentiality is not warranted and if its supplier is either unwilling to make the information 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 appropriate 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 initiating an anti-dumping investigation pursuant to paragraph 6 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, 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, 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) The provisions of this paragraph shall not preclude the authorities from reaching preliminary determinations, affirmative or negative, or from applying provisional measures expeditiously. In cases in which any interested party withholds the necessary information, a final finding, affirmative or negative, may be made on the basis of the facts available.

8. 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 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. However, the authorities are of course free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

D. IMPOSITION OF ANTI-DUMPING DUTIES

9. 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. It is desirable that the imposition be permissive in all participating countries, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

(b) When an anti-dumping duty is imposed in respect of any goods, such anti-dumping duty shall be levied, 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 injury. The authorities shall name the supplier or suppliers of the goods concerned. If, however, 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.

(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 is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

(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 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, when so 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 as quickly as possible.

(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 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 for final consumption to that area, ¹except in cases where the exporter shall, prior to the imposition of anti-dumping duties, be given an opportunity to cease dumping in the area concerned. In such cases, if adequate assurance to this effect is promptly given, anti-dumping duties shall not be imposed, provided, however, that if the assurance is not given or is not satisfied, the duties may be imposed without limitation to an area.¹

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 injury.

(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.

11. Application of provisional measures

(a) Provisional measures may be taken only when a preliminary decision has been taken that there is dumping and when there is sufficient evidence of material injury.

(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 authorities concerned shall inform representatives of the exporting country and the directly interested parties of their decisions regarding 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 such decisions.

(d) 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 and the importer, six months.

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

¹The delegation of the EEC has stated its willingness to agree to the deletion of the brackets, provided that a satisfactory provision is agreed to in paragraph 5(a)(ii).

Retroactivity

12. Anti-dumping duties and provisional measures shall only be applied to goods which enter for consumption after the time when the decision taken under paragraphs 9(a) and 11(a) respectively, enters into force, except that in cases where:

(i) a determination of material injury (but not of a threat of material injury, or of the material retardation of the establishment of an industry) is made, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied; and also except in cases where the provisional measures consist of provisional duties and the dumped imports carried out during this period would, in the absence of these provisional measures, have caused material injury. If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the bond or security, the difference shall be reimbursed or the duty recalculated, as the case may be;

(ii) appraisement is suspended for the goods in question for reasons which arose before the initiation of the dumping tax and which are unrelated to the question of dumping, retroactive assessment of anti-dumping duties may extend back to a period not more than 120 days before the submission of the complaint;

(iii) for the dumped products in question the authorities determine

(a) either that there is a history of injurious dumping or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause material injury,

(b) and that the material injury is caused by sporadic dumping (massive amounts of dumped imports in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to levy an anti-dumping duty retroactively on that import,

the duty may be levied on goods which were entered for consumption not more than ninety days prior to the date of application of provisional measures.

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 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

14. 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

15. International consultation

(a) The signatories to this Code 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) The provisions of this Code are without prejudice to Articles XXII and XXIII of the General Agreement.

H. FINAL DISPOSITIONS

16. (a) This Code shall be open for acceptance, by signature or otherwise, until 30 November 1967/ by the governments of/ and shall enter into force on 1 July 1968/ provided it shall then have been accepted by those governments.

(b) It shall be open for acceptance, by signature or otherwise, by other contracting parties to the General Agreement and shall enter into force for such a contracting party upon acceptance by it, provided it shall have entered into force pursuant to paragraph (a) above./

17. The signatories to this Code referred to in paragraph 16(a) shall, not later than 1 July 1968/, take all necessary steps, of a general or particular character, to ensure the conformity of their laws, regulations and administrative procedures with the provisions of this Code.