

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES

Thirteenth Session ANTI-DUMPING AND COUNTERVAILING DUTIES

Suggestions submitted by contracting parties for further action

At the Twelfth Session the CONTRACTING PARTIES examined an analysis of the present legal and administrative situation in the field of anti-dumping and countervailing duties prepared by the secretariat in consultations with the governments concerned (L/712) and decided to ask contracting parties to indicate their views and suggestions for further study of this problem (SR.12/15, page 116). This note contains an analysis of the replies received from the contracting parties.

Suggestions were made by eight governments, namely: Austria, Czechoslovakia, Denmark, France, the Federal Republic of Germany, Japan, Sweden and the United States. They vary from a suggestion that the governments should inform the secretariat of all changes in their national legislation to a proposal to reach agreement on questions of interpretation and procedure.

These suggestions are summarized below and, for the convenience of the contracting parties, they have been classified into seven groups.

A. Publicity of national provisions

The Austrian and the United States Governments suggest that the analysis of the GATT secretariat on the national legislation in force should be supplemented so as to cover subsequent changes in national laws and regulations; to that effect the contracting parties should be invited to communicate such changes without delay to the secretariat. Austria thinks that the GATT secretariat should publish each year the information thus received.

B. The relation of national provisions with the provisions of GATT

Denmark and Japan express the view that the analysis prepared by the secretariat should be supplemented by a study of the relation of the national provisions with Article VI. In this connexion, Japan would like to see the study extended so as to bring out the reasons which make it impossible for some countries to introduce anti-dumping provisions in their legislation, or to apply such provisions which are already part of the legislation.

France and Czechoslovakia would be particularly interested in a more detailed study of the relation of the application of the anti-dumping provisions with the most-favoured-nation clause of Article I. In particular, Czechoslovakia feels that if anti-dumping duties are levied, they should be applied in the same way to all similar cases.

C. Interpretation of Article VI

Some suggestions stress the advantage of having an agreed interpretation of Article VI so as to ensure uniformity in the application of that Article by all contracting parties. The extension of the study in this direction is suggested explicitly or implicitly by the Governments of Austria, Czechoslovakia, Denmark, France, the Federal Republic of Germany, Japan and Sweden. This suggestion, if accepted, would probably lead to a recommendation by the CONTRACTING PARTIES.

The Government of Germany suggests that a working party should list the methods and practices which constitute an undue obstacle to international trade, and which, therefore, should be avoided as well as those which are recognized as involving the least interference with trading operations.

Some of the above-mentioned countries, particularly Sweden, not only pronounce themselves in favour of a commonly accepted interpretation of terms used in Article VI, but enumerate instances which, in their view, need special attention, such as:

1. "Domestic market price"

Sweden mainly stresses that this term should be defined in a way which permits the usage of average prices.

Czechoslovakia suggests that the interpretation should make it clear that the domestic market price may be calculated on the basis of the situation in comparable third countries.

2. "Dumping margin"

Sweden mainly draws attention to the problem of the cost of freight in calculating the anti-dumping margin.

3. "Prejudice to industry in the case of anti-dumping and countervailing duties". (France and Sweden)

4. "Like product". (Sweden)

5. "Cost of production". (Sweden)

6. "Subsidy on export of merchandise".

Sweden, in this connexion, draws attention to the problem of the so-called "Freight dumping duty".

D. Suggestions concerning current problems

Some of the countries suggesting further studies draw attention to a number of problems which only recently became of importance. These countries feel that the existing provisions of Article VI do not deal satisfactorily with these cases and therefore should be supplemented so as to take account of the new situation. The problems in question are:

1. Imports from State-trading countries. Austria, Czechoslovakia and the Federal Republic of Germany draw attention to problems which arose from the application of anti-dumping duties on such imports.
2. Basis price system. The permissibility of such systems, where the normal price which serves as a basis for calculating the anti-dumping margin is not fixed in the case of every import but laid down generally as a result of a calculation based on an average situation. This point is mainly stressed by Sweden.
3. Indirect dumping. Sweden is also concerned with indirect dumping which occurs when the cheap price of an exported product is the result of dumping by exporters of a country to a third country wherefrom the goods are re-exported, either without processing or after manufacturing.
4. Dumping on third markets. Austria refers to this problem without indicating the conditions under which this dumping takes place.

E. Improvement of international procedures

A suggestion is made by Czechoslovakia that governments should have resort to anti-dumping action only after consultation with the country affected concerning the basis on which the anti-dumping margin will be calculated.

F. Recommendations relating to national procedure

Although most of the countries making suggestions seem to be conscious of the importance of procedural questions, practically only Sweden and France submit concrete suggestions. These suggestions, all of which come from Sweden (except the twelfth which has been put forward by France) are the following:

1. Investigations in a foreign country should be carried out only with the consent of the authorities of that country.
2. Anti-dumping and countervailing duties should only be levied on "selected" products.
3. Decisions about the "selection" should be taken at a high administrative level (decree, etc.).
4. Representatives of the affected industries should be heard before final action is taken.
5. All decrees, decisions and measures in the field of anti-dumping should be open to an appeal.
6. The amount of duty should not be fixed in the basic decree.
7. Decisions should be published as soon as possible.
8. Decisions should be subject to periodical reviews.

9. No action should be taken before the relevant decision enters into force.
10. The decisions should permit the application of anti-dumping duties without necessitating further investigations concerning the existence of dumping in the actual case by the customs administration.
11. The application of provisional measures should be strictly limited in time.
12. The action of countries not having a pre-selection system should be subjected to greater publicity.

G. Recommendations to standardize the national provisions

A standardization of the relevant national legislative provisions or at least of administrative regulations is suggested by the Federal Republic of Germany and Japan.

If the CONTRACTING PARTIES set up a working party to study the various recommendations received the full text of the communications of the contracting parties will be made available to the working party.