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Memorandum by the Austrian Government

Paragraph 2 of Article VI provides that countries may levy anti-dumping duties which shall not be greater in amount than the margin between the so-called "normal value" and the import price which is considered to be a dumping price. This means in other terms that, according to the decision of the Panel of 26 February 1955 the amount must be calculated and proved in any individual case (BISD, Third Supplement, page 81). In the absence of such evidence e.g. if the necessary data are not available, the country is not entitled to levy an anti-dumping duty. In the view of the Austrian Government, however, the rules of Article VI cannot be interpreted as meaning that a country having made these rules an integral part of its legislation, is prevented from calculating the normal value on the basis of other criteria such as the comparable domestic prices in the importing country, average domestic prices, etc., even if a case of dumping appears highly probable.

The present situation requires these countries to submit definite evidence in any individual case that the amount of the duty corresponds to the dumping margin. The onus of proof rests solely with the importing country; however, it is often impossible for the importing country to furnish such proof.

If dumping is suspected in the case of imports of raw materials it might be possible to use the domestic market prices of like products in the exporting country for determining the normal value, as such materials are mostly of the same kind and therefore normally have no widely differing specifications, and moreover, their world market prices are more or less uniform.

Determining the likeness and comparability of prices of semi-manufactured products becomes gradually more and more difficult as one deals with more and more highly processed items.

In view of the great variety of products in modern economies, the comparability of prices of final products belonging to a like category may be considered as unattainable.

In today's national economies, with the continuing advance of technology, products with exactly the same outward appearance may consist of quite different basic materials and may have been produced according to quite different production methods involving entirely different cost elements which make impossible any exact comparison of prices, as required under GATT rules. Moreover, such products are subject to the influence of fashion and other marketing factors, and it would therefore be impossible to state that, for instance, a lady's dress or a pair of men's shoes is a "like product" compared with another dress or another pair of shoes.

As the GATT rules in their present wording obviously do not allow for a different basis of calculation for the establishment of the normal value, for instance, in calculating the average price of products having a comparable outward appearance, it is necessary to make an exact numerical calculation of the comparable inland price for the "like product". This conforms with the recommendation of the Panel of 26 February 1955 which states in paragraph 8 that the case of dumping must be "clearly established", and therefore recommends to the government of the exporting country to grant "officials of the importing country free access to the books of the exporters" (BISD, Third Supplement, page 90, paragraph 32 of the recommendation).

The difficulties involved in assessing the "normal value" on the basis of the domestic price in the exporting country are also encountered in calculating the "normal value" of like products exported to third countries in accordance with Article VI, paragraph 1(b)(i). In such cases, too, an exact calculation of the dumping margin as required by the GATT rules appears almost impossible.

These considerations prove - especially in the case of final products - that neither the home price nor the export price is suitable for the calculation of the dumping margin, since the importing country is not in a position to compare exactly, as required by the rules of Article VI, the dumped product with a like product either in the home market of the exporting country or even on third markets.

As far as the third possibility foreseen by the GATT rules under Article VI, paragraph 1(b)(ii) is concerned, we must ask ourselves whether it is possible to calculate the dumping margin on the basis of production cost of the product in the country of origin plus a reasonable margin for selling cost and profit.

Article VI of the GATT rules provides that the anti-dumping duty must be equal to an amount between the export price and the amount which consists of the cost of production plus a reasonable addition for selling cost and profit. However, as already outlined at the outset, importing countries - like Austria - are not in a position to calculate such a precise amount since they have no means of forcing the exporting country to allow them to study the elements of the computation.

Quite to the contrary, as in many cases, granting access to the books in foreign countries might be identical with the disclosure of secret information on production, and it can well be expected that every country would not accept such an international obligation.

To summarize, it can be stated that Austria, which has made Article VI of the GATT an integral part of its legislation, will practically never be in a position to take anti-dumping measures if the present interpretation of this rule is maintained.

For these reasons it is essential that, through regulations to be adopted within the framework of GATT, all contracting parties be given the same possibility to apply anti-dumping measures. Austria is in agreement with the views of the United Kingdom Government as expressed in document L/963 that such regulations would have to be flexible enough to safeguard the interests of exporting countries as well.