

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers

GROUP ON ANTI-DUMPING POLICIES

Note on Meeting on 20-21 October 1965

Revision

General

1. The Group on Anti-Dumping Policies met on 20 and 21 October 1965 to discuss a Draft International Code on Anti-Dumping Procedure and Practice (Spec(65)86), prepared by the United Kingdom.
2. The representative of the United Kingdom stressed that the Draft Code was based on Article VI of GATT and on the report of the GATT Group of Experts. The members of the Group agreed that the British Draft Code was a good basis for discussion in the Group. Several representatives, however, pointed out that their governments had not had time enough for a thorough examination of the Draft. Some members indicated that not all provisions in the present British Draft were acceptable to their governments.
3. A member said that in the first instance some conclusion must be reached as to whether the fundamental approach was correct. He detected in the Draft Code a hint of preoccupation with certain administrative problems which could only be dealt with when the fundamental principles had been agreed. In this connexion he mentioned the definition of dumping, the definition of injury and the definition of industry. He also made it clear that the fact that his Government was willing to base the discussion on the United Kingdom Draft did not mean that all or any particular part of it was acceptable.
4. Another member commented that anti-dumping laws must be seen in the light of Article VI and before any anti-dumping measures were taken one should agree on basic issues among which he mentioned the clear definition of prices, proof of substantial injury and the need for rapid procedures.
5. Some members pointed out that the Draft mainly took up the problems of persistent dumping. They wished that casual dumping should also be covered by the Code.

6. One member noted that any interpretation of Article VI, which was in certain respects a compromise text, could upset the existing balance of the Article. In the light of the history of previous discussions in the GATT it was open to question whether the CONTRACTING PARTIES had accepted, as implied in the United Kingdom draft, that dumping in itself was not reprehensible and not actionable.

7. In reply to a question, the United Kingdom representative said that the Draft Code only dealt with anti-dumping and not with countervailing duties. It would, however, not meet with difficulties to add a few special provisions relating to countervailing duties, either at relevant places in the Draft or in an additional section to be added to it.

8. One member said that the general impression created by the Draft Code was that Article VI was generally accepted by the contracting parties. He queried whether this was really the position, and, if not, whether this point should not be covered by the preamble. The United Kingdom representative replied that in drafting the Code it had been assumed that the basic principles of Article VI were accepted by all contracting parties. As the Code was based on Article VI it would not be acceptable if the main principles of that Article were not accepted i.e. that dumping per se was not wrong and not actionable. It might, however, be desirable to preface the Code by re-affirmation of Article VI and the consequential acceptance of the Provisions which follow.

9. During the ensuing preliminary discussion of the Draft the representative of the United Kingdom answered questions raised in order to clarify certain points contained in the various provisions. The main points are summarized below.

Examination of the text of the Code

10. Section A (Conditions governing the acceptance and preliminary consideration of applications for imposition of anti-dumping duties.) Members of the Group pointed out that the proportion of the industry, on behalf of which an application for the imposition of an anti-dumping duty should be made, had to be judged against the background of the size of the country. In a large market there could obviously be serious regional problems to take into account, which did not appear in a small market (see paragraph 15 below). In reply to the question whether trade unions or labour organizations could submit applications, the United Kingdom representative pointed out that applications should be supported by evidence of both dumping and injury and labour representatives would not normally be in possession of the necessary information in regard to injury. It was suggested that the demand for information in support of an application should not be too severe as it was sometimes difficult for an industry to obtain the relevant data. The United Kingdom representative explained that the intention was to ensure that the applicants should - and normally could - provide information to show why they believed goods were dumped and why the dumping was causing injury; the purpose was to prevent the acceptance of unfounded applications.

11. Section B (Notification to and provision of information by foreign governments and suppliers.) It was pointed out that both foreign suppliers and domestic producers might be reluctant to divulge information. They might not wish it given even to their own Government for fear, for example, of anti-cartel action. The United Kingdom representative emphasized the importance, for all these reasons, of investigating authorities treating as confidential the information given to them; it was essential that all concerned should have complete trust in the discretion of the authorities.
12. Section C (Provisional measures.) It was argued that withholding of appraisal in many cases would cause less harm for the importers than payment of provisional duties or deposit of a security. The United Kingdom representative pointed out that the provisions covered both duties and bonds; the important points were that either should be related to the margin of dumping as provisionally established and to make the clear distinction between normal Customs valuation procedures and anti-dumping action.
13. Section D (Determination of dumping in accordance with Article VI:1(a).) It was asked if the provisions of 9(a) implied that there was no dumping if the net return from export sales was not lower than the net return from domestic sales. The United Kingdom representative pointed out that such a determination did not fit in with the definition of dumping in Article VI of GATT. It would furthermore necessitate very difficult calculations.
14. Section E (Determination of dumping in accordance with Article VI:1(b)(i) and (ii).) The representative of the United Kingdom made it clear that the alternatives listed in Provision 11 were intended to be equal.
15. Section F (Definition of an industry.) Attention was called to the special problems of widespread markets, where the division into virtually independent sub-markets might make an overall application of an anti-dumping duty meaningless (cf. also paragraph 10 above). The United Kingdom representative pointed out that suggestions should be made from countries who considered they had to deal with special circumstances in which the normal definition of an industry would not be applicable, but clearly it would be very difficult to devise special criteria which would provide the necessary safeguards to prevent the unjustifiable acceptance of producers in a certain area being accepted as a domestic industry. It must be remembered that if duties were imposed they would apply to imports over the whole country and the producers in other areas would then obtain unjustifiable protection.
16. Section G (Determination of material injury.) One member of the Group said that in his opinion the provisions relating to material injury were too restrictive; a more limited degree of injury than that of the Draft Code should be considered to be sufficient to justify the imposition of an anti-dumping duty. In reply to a question the United Kingdom representative explained that material injury could be due to the volume of the imports and/or to the effect on prices; the latter was indeed the most usual and could be caused by a comparatively small volume of imports.

17. Section H (Determination of duties.) The United Kingdom representative said that it was generally agreed that the anti-dumping duty might be less but should never be more than the margin of dumping. The basic price was merely the price fixed within the margin of dumping above which it had been determined that imports would not cause or threaten material injury.

18. Section I (Imposition of the duties.) In reply to a question about the repayment of provisional duties the United Kingdom representative pointed out that the provision covered repayment of excess in cases where the duties finally imposed were lower than the provisional duties. A different provision covered the repayment of excess when the margin of dumping decreased after the final duty had been imposed.

19. Section J (Duration of anti-dumping duties.) Members suggested that there should be a provision added to the effect that the application of anti-dumping duties should be periodically reviewed, for example once or twice a year. The United Kingdom representative said that such a provision certainly could be added. The practical effects would, however, probably be limited as it was in the interest of the parties concerned to ask for a review as soon as they felt that it could be justified.

20. Section K (Anti-dumping action on behalf of third countries.) A member said that Provisions 22-24 went further than Article VI itself. The United Kingdom representative replied that they did not depart from Article VI and only covered the comments made by the experts on the provisions of Article VI. It was pointed out that anti-dumping action on behalf of third countries would raise special problems which were more complicated than those in normal anti-dumping cases and which had to be very carefully studied. The importing country would probably normally tend to proceed with cases of third country dumping reluctantly as it would be in its own interest to import products at as low a price as possible.

Next meeting of the Group

21. The Group agreed to reconvene at a later date to pursue its discussion of the Draft Code. Delegations should transmit any general suggestions or opinions on the provisions of the Draft Code as soon as possible to the secretariat for circulation to the members of the Group.