

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TN.64/NTB/W/6

3 March 1966

Special Distribution

Sub-Committee on Non-Tariff Barriers

GROUP ON ANTI-DUMPING POLICIES

Note on Meeting on 26-27 January 1966

1. The Group had before it a paper (TN.64/NTB/W/3) submitted by the United States delegation which drew the attention to certain fundamental principles on which the United States delegation considered a degree of consensus seemed necessary before a detailed study of a draft agreement on anti-dumping procedures and practice could be started.
2. A document from the delegation of Japan (TN.64/NTB/W/4) was circulated during the meeting commenting upon the Draft International Code on Anti-Dumping Procedure and Practice (Spec(65)86), which has been before the Group since early October 1965, and on which the Group had had a preliminary exchange of views during its meeting on 21-22 October 1965.
3. The Group agreed, at this meeting, to have an exchange of views in order to try to clarify important points of principle, and agreed that the questions raised in the United States paper should be taken as a background for this discussion.
4. The representative of the United States welcomed the initiative of the United Kingdom in proposing a Code on anti-dumping procedures and practices. He regarded procedural matters as an essential part of any international agreement but did not believe that a discussion of procedures was the best way to initiate a negotiation of an international anti-dumping agreement. Prior to a further discussion of procedures, there should be a discussion of more fundamental issues. The paper that his delegation had introduced dealt with some of the fundamental issues relating to the question of dumping, such as the rationale for anti-dumping laws, the definition of material injury, and the definition of industry in terms of both geographic scope and product coverage. There might be other issues that delegations would want to suggest or that would be brought out in the discussion. The paper was only meant to be illustrative of the kinds of questions that must be considered before the Group could begin framing an international agreement. In presenting the paper the United States delegation wanted to make it clear that they had an open mind on the questions that it posed. They hoped that other delegations had found the paper provocative and that they would comment freely on the questions that it presented in order that an initial sounding could be obtained on those basic issues. They did not, however, anticipate that the discussion would be exhaustive nor that delegations would be prepared to take positions on all of the questions asked at the present stage.

5. While members of the Group were prepared to give their fullest consideration to an exchange of views on the questions asked in the United States paper, some felt that the discussion would be more profitable if the United States could formulate their views in concrete terms so as to permit a comparison of the United States views with those which had already been placed before the Group and any others which might be submitted by other participants.

6. A number of participants felt that the most practical way of proceeding was to start from the principles as they were given in Article VI, which had withstood the test of time with reasonable success. While they did not deny that it was useful to amplify the concepts of Article VI and systematize the procedures that logically follow therefrom, they accepted the existing principles and feared that any innovations might have far-reaching implications whose effect it would be impossible to foresee. Some other participants, however, felt that although the Group might find that Article VI was a satisfactory basis for negotiation, its adequacy should be examined. Article VI was drafted some considerable time ago, when world trading conditions were very different.

7. While accepting that it was desirable to consider possible alterations to the definition of dumping in Article VI some delegations emphasized that there is no obligation on the importing country to take action. In these circumstances the importing country can consider the beneficial as well as the adverse effects of the imports and decide whether or not action is in its national interest.

I. (1) Should anti-dumping measures be limited to prevention of market monopolization by foreign exporters?

It was argued that price discrimination may foster market competition and promote lower prices without creating a substantial risk of destroying competitors. In such cases there was no need for anti-dumping measures which should be limited to cases, even if they were rare, where an exporter reduces prices in an export market in order to establish a market monopoly or where the actual effects of the dumping is monopolization, even if it was not clear that this was the objective of the exporter.

It was pointed out that intent to monopolize was extremely rare and such a definition would mean that action would seldom or if ever be taken. Moreover it would be impracticable to establish the intent of the exporter and anti-dumping action must be based on verifiable effects.

- I. (2) Should anti-dumping measures permit alignment of exporters prices to meet competitive prices in the export market? Should such provision be limited to meeting the prices of foreign but not domestic competitors in the export market?

It was argued that in cases where the purpose of price discrimination was to meet competitors' prices in the export market - e.g. in cases where the exporter had had a share of the market but was being forced out of it - it was not likely that monopolization of the market in question would result but rather that competition would be fostered. There was thus a reason why a "meeting competition" alignment of prices should be admitted without anti-dumping action being taken, even in cases where the aligned price was technically dumped. An exporter should be able to know in advance that if he was cutting his prices in order to assure access to a market, he was not going to meet anti-dumping action.

On the other hand it was argued, as in the case of monopolization in I(1), that it would in most cases be difficult to establish the motives in cases of alignment of prices. It would furthermore, particularly in a market situation with prices moving downward, be hard to establish who was aligning his prices with whom. Some delegations pointed out that alignment of prices was a matter of consideration when material injury was being assessed; if the alignment did not cause injury to a domestic industry no action should be taken; similarly if an exporter was dumping in order to compete with another exporter who could sell at a low price without dumping it might be wrong to impose duties on the dumped imports. It was, therefore, suggested that alignment of prices did not constitute a suitable basis for a definition of dumping and should be considered when other aspects of the assessment of material injury were being discussed.

- I. (3) One possible view is that the purpose of anti-dumping measures, by requiring comparable pricing in home and export markets, is to encourage allocation of average unit cost among markets. Is this theory a valid basis for anti-dumping measures?

The main arguments in favour of this theory were that in order to make the price mechanism in international trade an efficient instrument for directing allocation of resources, it is necessary that sales price recoups costs in different markets in proportion to the units sold in each, so that average costs should be the same. It may be difficult to determine proper cost allocation, but by requiring comparable home market and export market pricing, anti-dumping laws may in effect require equal allocation of average unit cost. The anti-dumping measures may thus set in motion the competitive forces which push price towards average unit cost.

It was pointed out that anti-dumping measures based on average unit costs were not an appropriate means for further broad economic objectives in international trade; such a concept would mean that the authorities in the importing country would be attempting to assess and correct motives and conditions in other countries. There were also strong practical arguments against the suggestion since very long and difficult investigations would be required to establish unit costs.

- I. (4) Should anti-dumping measures apply where a multi-product firm is able to charge a low price in an export market for one product because the price of other products is designed to cover costs of the low-priced product?

If the theory on cost allocation discussed in section I(3) is accepted, it would follow that anti-dumping action should be taken in cases where multi-product firms decide that costs should be primarily allocated to those products which can best recoup the costs in the market while other products are sold for less. Such a pricing policy could result in export sales of particular products at prices substantially below the average unit cost although no differential exists between the domestic price and the export price of that particular product.

Against such pricing policies being considered as dumping it was argued - on the same grounds as in section I(3) - that there was no reason for taking action against particular cost allocation practices unless imports of the product in question caused injury to industry in the importing country. It was also pointed out that investigations into the production costs and pricing policies of multi-product firms would be formidable tasks, even if they could normally be restricted to a limited number of closely related products. It was also stressed that producers, as a normal practice, fix their prices for their running production more on the basis of market conditions than on the basis of proper cost allocation. In the particular case where the product sold below its cost was only sold in export markets, it was recognized that the situation was somewhat different, but it was pointed out that such cases were already covered by paragraph 1(b)(ii) - comparison with the cost of production - of Article VI. The question was asked whether in such cases the whole production cost should be taken into account or only the marginal cost for that particular kind of product.

- I. (5) Should anti-dumping measures distinguish among instances of price discrimination between home and export markets depending on the type of discrimination practised, or the purpose of such discrimination?

Amongst the questions raised under this heading are if anti-dumping measures should be taken if exporters reduce prices to retain existing business in a general downturn in the business cycle in a foreign market; if exporters temporarily reduce their export prices below home market prices to foster competitive entry

into a market; if exporters use dual pricing to secure a market in cases where a foreign product is less acceptable to the consumers than domestic products; if exporters fix different prices in various geographical areas, not because of differences in cost but because changes in supply or demand are not necessarily recognized at the same time in every regional market; and if exporters dispose of goods in export markets through end-of-season or end-of-run "one-shot" disposals at prices below home market prices.

It was pointed out that in most cases it would be quite impossible to establish the real motives of the exporter and that a definition could not be based on subjective judgments. Moreover, as there should be no obligation on countries to take anti-dumping action, the importing country can decide whether to take action or not in the light of the various effects of the dumped imports.

With reference to sporadic dumping - amongst the reasons for which were mentioned over-estimation of market demands, cancellation of contracts, strikes, over-purchases by users and bankruptcies - it was pointed out that it was mainly associated with sales from a large highly-industrialized market into a smaller market. A single sale, even at a substantial dumping price, is not likely to create difficulties in the importing country, but a number of such sales, even if made by several different exporters, can cause serious disruption in the importing country. The pressure from imports of temporarily dumped goods may easily result in domestic producers being forced to withdraw from the market or reduce their line. Although such sporadic dumping generally has some short-term beneficial effects for consumers, the goods are seldom available on a sufficiently consistent basis to meet the longer term needs of the market. The draft code did not contain adequate provisions for dealing with sporadic dumping. This was a problem that would have to be reverted to later.

I. (6) Should anti-dumping laws permit absorption of freight costs, or so-called "basing-point" price systems, whose effect is to discourage geographic monopolization?

It was argued in favour of not taking anti-dumping action against freight equalization systems, that by such devices, which aim at a geographic uniformity of prices, competition is fostered and geographic monopolies forestalled.

It was pointed out the importance of freight equalization schemes would be greater under a system where anti-dumping measures were based on cost distribution. Some delegates pointed out that freight charges were an important factor in determining margins of dumping under the present GATT rules; regardless of the criteria which might be adopted in an anti-dumping code the problem needed further study because of the many different situations and circumstances which could arise, for example, should freight charges on exported goods be compared with average

freight charges on domestic deliveries or with the highest charges on domestic sales. It was pointed out that it would be difficult, if not impossible, to fix rules relating to freight charges which could be applied automatically in every case, nevertheless amplification of the point was required in section D of the United Kingdom draft code.

II. Definition of industry

(1) The "geographic" definition

(a) It was asked whether "industry" in this context was to be taken to mean all the producers within the national territory regardless of the size and diversity of location of its components. It was argued that regional markets could be the more appropriate units for consideration in certain circumstances.

It was pointed out that this was a question which only affected a very limited numbers of countries. For most countries a nationwide application would be the normal solution.

(b) It was felt that there might be a case for extending the concept of industry in a free-trade area or customs union, beyond the national frontiers to cover the whole industry inside the trading zone in question.

It was commented that whatever its relevance might be to industry in a customs union, it did not apply to a free-trade area.

(2) The "product" definition

It was made clear that the "geographic" and the "product" definition, which were discussed in this section, were not to be considered as alternatives. It was obvious that in the context of determining "material injury", administrations needed a precise understanding in each case both of the product or range of products involved and of the producers involved, i.e., in what, if any, circumstances could the latter be those situated in a particular area.

III. Definition of material injury

It was pointed out that many of the questions raised earlier in the discussion were directly relevant to the way one could approach the question of material injury. Some of the questions might, in fact, find appropriate place in section III. Point (4) of this section aimed in fact at calling attention to such questions. Some members drew attention to the fact that section III(2), which raised the basic

question, should really come first as section III(1). It was felt that the conclusion of the GATT Group of Experts that "no precise definitions or set of rules could be given in respect of the injury concept" recognized that it was impossible to lay down a precise definition of material injury which could be applied in all cases. On the other hand, it should be possible to narrow the concept of injury on the basis of agreed criteria. In this connexion it was stressed that any rigid criteria relating to the volume of imports or their effect on prices which might be applied automatically in every case should be avoided. The importance of the word "material" was to prevent action being taken when injury was insignificant.

Section III(1) of the United States paper queried the phrase "reduction in return" and it was explained that this referred to factual evidence in regard to "how well a concern was doing" as revealed by examination of the accounts showing gross profits, return on capital, etc. In using these words in the draft code, the United Kingdom delegation had in mind profits made and how they were affected by the imports in question.

Under section III(1) the question of new (or intended) industries was also raised. Some delegations felt that provisions could be devised in an international code for judging whether the imported products were, in fact, preventing the establishment of such industries.

Attention was drawn to the fact that the Group's bias has hitherto appeared to be entirely in favour of industrial products and the wish was expressed that as much emphasis be put on agricultural as on industrial products.

The Group decided to meet again on 3 and 4 March to continue its discussion.