

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Non-Tariff Barriers
Group on Anti-Dumping Policies

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ANTI-DUMPING CHECK LIST Comments by Japan

At the meeting of the Group on Anti-Dumping Policies on 3-4 March 1966, it was agreed that member governments should send in to the secretariat by 15 April their comments on items VI, VII and VIII of the check list. The following are the comments of the Japanese Government. They are made without prejudice to the final position to be taken by the Japanese Government.

VI. ANTI-DUMPING DUTIES

A. Imposition

The imposition of anti-dumping duties should be of a permissive character, as is set out in Article VI of the GATT.

B. Applicability

(1) Imposition of duties on all imports of products concerned either from all sources or from a country concerned, regardless of whether a particular supplier has actually dumped or not, would burden innocent suppliers and would have detrimental effects on the free flow of trade, even if there is a way for subsequent relief open to consignments which are not dumped. Accordingly imposition of duties should only be made on dumped goods of an individual supplier which has been determined after due investigation as satisfying the two criteria of dumping.

(2) For exceptional cases where the supplier-by-supplier imposition of duties as proposed above is not feasible, it would be necessary to provide for alternative measures which are more practicable.

C. Amount of duty

As stated in the Japanese comments on the United Kingdom Draft Code (TN.64/NTB/W/4), it should be made a rule that a dumping margin should be assessed for each single consignment in accordance with its export price.

Provision 15(a) of the United Kingdom Draft Code provides a useful guide-line for the amount of duty to be actually levied.

D. Retroactive application

Anti-dumping duties should only be levied on consignments which are imported after the date the final decision is put into force and this decision should not apply retroactively except in cases where provisional measures have been applied; in such cases the duties may be collected on the imports covered, and up to the amount provided for, by the provisional measures. If the security made on the imports covered by the provisional measures exceed the duties finally determined the excess amounts should be refunded.

E. Duration

(1) As stated in Provision 20 of the United Kingdom Draft Code, anti-dumping duties should remain in force only so long as they are genuinely necessary. They should be revoked as soon as:

- (i) anti-dumping duties have not been collected over a sufficiently long period to demonstrate that the goods in question will continue to be sold at undumped prices;
- (ii) the authorities concerned are satisfied in the light of information at their disposal, or which is submitted to them, that imports of the goods in question on which the duty has been imposed will be sold at undumped prices or that the imports, though technically dumped, would no longer cause or threaten material injury to a domestic industry.

(2) The authorities concerned should carry out a review of the position if the government of the exporting country concerned, as well as suppliers of the goods in question, so requested.

VII. PROVISIONAL DUTIES

1. Criterion for provisional measures

(1) Provisional measures should be used only sparingly and in exceptional circumstances since the measures might well incur unduly grave disadvantage to the foreign suppliers concerned.

(2) For this reason, careful initial examination must take place before the provisional measure is introduced, in the course of which the authorities concerned should carefully examine the comments or counter evidence submitted by the foreign suppliers concerned, as well as the information provided by the applicants. The examination of the above comments and counter evidence, however, may be ex post facto in critical circumstances.

(3) Provisional measures shall be introduced only if and when it appears to the authorities concerned from their initial examination referred to in 1(2) above that the allegedly dumped imports are in fact dumped and that either they are currently causing material injury to the domestic producers or the threat that they will do so is so imminent that material injury would result if the imports continued during the remaining period of investigation.

(4) In the event that the provisional measures are taken the government of the importing country concerned should inform the suppliers as well as the government of the exporting country concerned of the reasons why resort to such measures has been found necessary and of the ground on which these measures have been based.

(5) Provisional measures should not be retroactive.

2. Period of provisional measures

Since the provisional measures are bound to entail economic burdens to the foreign suppliers concerned, temporary as they may be, these measures may be taken only for a definite period. The period would, in principle, be about three months.

3. Mode of provisional measures

As indicated in the report of the Group of Experts, it would be preferable that the provisional action should take the form of security rather than of anti-dumping duties.

The appraisalment of the valuation of the goods for the normal duties and the clearance of the goods shall not be withheld or delayed as a direct or indirect means of taking provisional anti-dumping action.

VIII. INVESTIGATION PROCEDURES AND PROCEDURAL FAIRNESS

A. Initiation of investigations and consequences thereof

1. Applicants for action

The domestic producers are in a position to be aware at first-hand whether a situation satisfying the criterion of material injury has arisen. Accordingly, the government investigation in connexion with anti-dumping action should not in principle be initiated until the application for such action has been made by domestic producers.

It would be necessary, however, for the Group to examine a case where exceptionally the initiation of anti-dumping action might appropriately be based on the initiative coming from the government of the importing country itself.

2. Conditions governing the acceptance of applications

It appears that Provisions 2 and 3 of the United Kingdom Draft Code provide a useful guide-line for setting out conditions governing the acceptance of applications.

3. Publicity of investigation

It would be preferable that public notice at premature stage should be avoided since it would be against the interest of the foreign suppliers concerned.

4. Confidential treatment of information

As provided in Provision 4(d) of the United Kingdom Draft Code, all information provided on a confidential basis by the individual foreign suppliers concerned should be treated as strictly confidential by the authorities concerned who should not reveal it to any outside interests or to other interested parties e.g. the other foreign suppliers in the same or other countries, importers or the applicants.

B. Finding of dumping and material injury

1. (1) The official representatives of the supplying country or countries concerned should be notified that an application has been accepted for investigation as soon as the authorities concerned are satisfied that a prima facie case has been made out on both dumping and injury.

(2) At the same time, the evidence on both price and injury and other relevant information should be given to the foreign suppliers concerned with the exception of such information as considered to be business secrets.

All information provided to the foreign suppliers concerned should at the same time be notified to foreign governments concerned.

(3) Any procedures including investigation, provisional measures, imposition of anti-dumping duties etc. should not be initiated by the governments of the importing countries concerned against the suppliers to whom the above notification of information has not been made.

(4) In exceptional cases where the suppliers are not specified or are large in number, notification of information may be made in accordance with simplified procedures.

2. The foreign suppliers concerned should be given a reasonable period to submit their comments and counter evidence on the information referred to in 1(2) above. Further, it would be desirable that the interested parties should be afforded an opportunity to be heard by the competent authorities.

Full consideration should be given by the authorities concerned to all comments and counter evidence submitted to them by the foreign suppliers concerned.

3. The final decision should be published in an official form and the representatives of the governments of the countries concerned should be advised of the decision before, or at the time when, the official announcement is made; if the decision is that an action should be taken, then they should be informed of the grounds on which the decision has been made.

C. Information gathering in country of export

Information gathering in the country of export should be limited to such exceptional cases where its need has been well justified on sufficient evidence and the concurrence of the suppliers and the governments concerned has been obtained. When this should in fact take place the agreement of the government concerned should also be sought with respect to the procedures for the investigation.