

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## ANTI-DUMPING CHECKLIST

### Comments by the European Economic Community on Items I to V and IX to XIII

#### I. CONCEPT OF DUMPING

##### A. Price discrimination criteria

Pursuant to Article VI of the General Agreement, dumping is deemed to be the sale of merchandise of one country in the market of another country at less than the normal value of such merchandise, such value being not the price in the market of the importing country, but the price of a like product when destined for consumption in the exporting country or, in the absence of such domestic price, the price for export to any third country or the cost of production in the country of origin. Consequently, dumping is a practice of price discrimination in external trade. This practice is to be condemned if it causes or threatens material injury. The importing country is therefore permitted to apply countervailing measures without the exporting country concerned being granted any right of compensation such as is provided for pursuant to Article XIX. One can infer from this that the General Agreement does not consider harmful dumping as one of the normal forms of international competition.

The European Economic Community abides by this principle which, by itself, justifies the application of anti-dumping duties without any need for recourse to other objective or subjective elements in this context.

In particular, the Community is opposed to any widening of the notion of dumping by subjective criteria that are foreign to Article VI of the General Agreement, as the latter provision does not take into consideration the motives, intentions and objectives sought in dumping operations. Indeed, the EEC considers that this provision would become practically inapplicable if, instead of basing the decision to introduce an anti-dumping duty on objective factual findings, one took into account subjective elements such as the intention to create a monopoly position for oneself in a given market etc.

While the Community accordingly rejects any idea of bringing into question the objective definition of dumping, as contained in Article VI of the General Agreement, it is not unaware of the interest of clarifying some of the notions used in that provision, in particular:

- the criteria provided for in Article VI, paragraph 1 of the General Agreement and the order in which they should be used;
- the export price and the mode of determining such price;
- the costs of production;
- the like product;
- lastly, indirect dumping.

Having regard to the fact that the report of the Group of Experts gives a valid interpretation of these terms, the EEC believes that the Group on Anti-Dumping Policies should abide by it in drawing up the code.

In this context the EEC considers it to be of great importance that, in establishing the margin of dumping, due account should be taken in each case of differences in the conditions of sale, tax differences and other differences affecting the comparability of prices. The price comparison should therefore be based on elements which are really comparable.

#### B. Hidden dumping by associated houses

With respect to hidden dumping in general - which is one of the forms in which dumping occurs - the EEC abides by the additional note to Article VI, paragraph 1 of the General Agreement and supports the considerations of the GATT Group of Experts in this regard.

### II. LIMITATION CRITERIA

#### A. Percentage limit

It seems to the Community that this item concerns the question whether it is desirable, for the margin of dumping and the material injury, to determine fixed limits, in particular in percentage terms, below which anti-dumping measures would not be taken even if the conditions of Article VI of the General Agreement were met. While being favourably disposed to any attempt to limit the application of anti-dumping duties to truly serious cases, and at present this would be of interest only to countries having mandatory anti-dumping legislation, the Community nevertheless does not believe that such an objective can be attained by means of the establishment of fixed criteria applicable in all cases.

Indeed, the situation of the various industries, and in particular their sensitivity to dumping practices, differs so widely from one product to another that it does not seem possible to select in a general way or even for categories of products, the percentages within which the margin of dumping should be considered negligible or the injury tolerable. Furthermore, the establishment of such fixed criteria might incite the circles concerned continually to engage in import dumping within the limits of the tolerated percentages. Lastly, the competent authorities would be tempted to apply anti-dumping duties in a virtually automatic manner whenever such tolerance were exceeded.

For these reasons the EEC is convinced that there is only one way of effectively limiting the application of Article VI of the General Agreement - namely that all the contracting parties should agree to make their anti-dumping legislation optional, thus leaving a discretionary margin to their competent authorities which would permit them to refrain from applying anti-dumping measures in certain particular cases.

B. Alignment of export prices

Article VI of the General Agreement does not mention the alignment of export prices among the criteria to be taken into consideration for the application of an anti-dumping duty. On the contrary, it condemns all dumping, whether or not there is alignment, if it causes or threatens material injury. The conclusion may be drawn that the alignment of prices is a permitted practice if, as may happen, it is not injurious to an industry of the importing country. On the other hand, it can be offset by defensive measures where it is the cause or one of the principal causes of material injury to such industry.

The EEC considers this solution satisfactory.

III. CONCEPT OF MATERIAL INJURY

A. Possible elements to be examined in this context

The Community agrees with the report of the Group of Experts that no precise definitions or set of rules can be given in this respect. Indeed, it seems essential that in each individual case all those factors should be taken into consideration which, whether collectively or separately, characterize the situation of the industry concerned.

If it has been suggested to formulate certain criteria for evaluating the material injury - such as a drop in earnings or sales, the share of the market lost the inadequacy of growth rates or utilization of capacity, the compression

of employment etc. - the EEC is prepared to take part in this work provided that such criteria are recognized as being of an indicative and not exclusive character.

B. Concept of "threat" of material injury

In this regard also, it seems impossible to establish fixed criteria. It can be noted however, in conformity with the report of the Group of Experts, that in cases where material injury is threatened by dumped imports, the application of anti-dumping measures must be studied and decided with particular care.

The threat of injury must therefore be real and not presumed solely on the basis of mere allegations or hypothetical possibilities.

C/D. Concept of retardation of establishment or development of an industry

The considerations expounded under B. above are applicable here by analogy.

IV. SPORADIC OR INTERMITTENT DUMPING

The EEC is aware of the problems which may arise from sporadic or intermittent dumping, particularly when carried out from a major industrial market in a smaller market. Nevertheless, it does not believe that, from the legal aspect, this form of dumping requires particular solutions. It can be offset pursuant to the provisions of Article VI of GATT if it proves to be really harmful. As regards the procedure, however, it may be useful for the importing country to have certain possibilities for rapid action such as the power to introduce provisional duties.

V. DEFINITION OF INDUSTRY

A. Product coverage

In the opinion of the EEC, a definition of industry by "product coverage" normally presupposes that the product concerned can be distinguished on the basis of the criteria recommended by the GATT Group of Experts for the definition of the "like product".

B. Geographic coverage

The EEC supports the general guiding principle set forth by the GATT Group of Experts that judgments of material injury should be related to total national output of the like commodity concerned or a significant part thereof.

It is of the opinion that normally this principle should apply mutatis mutandis to the economic integration areas recognized by the General Agreement.

#### IX. INTERNATIONAL PROCEDURES

The EEC considers that it would be normal that before instituting an anti-dumping duty the importing country should, in an appropriate manner, inform the government of the exporting country of the essential results of the investigation. The EEC member States have found from experience that such a notification in most cases leads to fruitful contacts between the governments concerned, enabling satisfactory solutions to be arrived at without any need for application of an anti-dumping duty. A prerequisite for this is of course that the governments should not be deprived of their freedom to act by legislation calling for the mandatory application of defensive measures against any harmful dumping.

Over and above such bilateral contacts the General Agreement provides for the possibility of consultations, pursuant to Article XXII. Although in the past contracting parties have only seldom invoked this procedure, it might nevertheless prove useful in certain specific cases. For this reason a consultation procedures might be included in the provisions of the international code.

Lastly, the EEC can subscribe to the conclusion of the GATT Group of Experts that contracting parties should be invited to notify the GATT secretariat of the introduction, alteration or removal of any anti-dumping duty.

#### XI. COUNTERVAILING DUTIES

The EEC recalls that the large majority of the GATT Group of Experts considered that the criterion of material injury should be an equally fundamental prerequisite for the imposition of countervailing duties as for the imposition of anti-dumping duties.

It attaches great importance to general confirmation of this principle.

#### XIII. POSSIBLE INTERNATIONAL AGREEMENT

The Community's position on this point is set forth in the first part of its note distributed by the GATT secretariat in document TN.64/NTB/W/10/Add.1.