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ANTI-DUMPING CHECKLIST

Addendum

Comments by the Government of Canada on Items I-V, IX-XI and XIII

I. Concept of Dumping

A. Price discrimination criteria

It is generally accepted that dumping, in the context of international trade, is the selling of a product for export at a price lower than the comparable price for the same product when sold for consumption in the domestic market of the exporter. This concept of price discrimination between the export and domestic markets is the basic definition of dumping in Article VI of the GATT. Where the product is not sold in the exporter's home market or the circumstances of sale are such that the prices obtained in the home market are not regarded as "in the ordinary course of trade", the GATT permits consideration of either:

- (a) the highest comparable price for the like product for export to a third country, or
- (b) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

The basic principle, i.e. the concept that dumping is price discrimination as between the export and domestic markets, seems sound as long as due allowance is made for differences in quantities purchased, conditions of sale, taxation, etc. as required in the second paragraph of Article VI:1 of GATT.

The first alternative principle, i.e. the concept of price discrimination between the selling price to the recipient country of the "dumped" goods and the highest price to any third country, does not appear to be equally valid. It assumes that exporters apply the same sales policy to all markets. This is often not the case.

The second alternative principle, i.e. comparison of the export price with the cost of production of the product plus a reasonable addition for selling cost and profit, may be unclear because it does not specify that administration costs should be included. Much depends on the technique of cost accounting employed. It seems, however, that if the word profit is used in the sense of gross profit, it would follow that all legitimate costs relating to the production and distribution of the product including administration expenses should be included. The question arises as to what is a reasonable margin of profit. Some systems of customs law require that the margin of profit realized on sales of similar products in the exporter's domestic market should be applied. This would appear preferable to fixing an arbitrary margin, whether specified in law or set by an official of the importing country.

The second paragraph of Section 1 of Article VI recognizes that certain features of normal business operations can influence price comparability and to the extent they do, they should be taken into account in assessing the margin of dumping. While the intent of this provision is clear, the simplicity of its wording reflects a recognition that it is difficult if not impractical to give specific guidance with respect to its application. In this connexion, suggestions have been advanced which would attempt to translate the intent of this article into specific provisions of application. It is doubtful however that provisions could be drafted which would at the same time be sufficiently precise and yet flexible enough to meet the wide range of situations which may arise.

B. Hidden dumping by associated houses

The first interpretive note to Article VI provides that where dumping takes the form of sales between associated companies at other than actual values, the margin of dumping may be calculated on the basis of the price at which the imported goods are resold by the importer. This provision gives a basis for dealing with hidden dumping between associated houses where goods are imported for resale in the condition as imported. The GATT however, does not provide detailed guidance for dealing with dumping between associated companies of goods not for resale, e.g. production materials and parts and parts for assembly. The importance of imports in these categories varies substantially between different countries.

The difficulty in regard to such transactions is that there often may not be a freely competitive price in the domestic market of the exporter. Where there is, it is not too difficult to establish the "comparable" price in terms of paragraph 1(a) of Article VI. Where there is not, "normal value" as used in Article VI can be calculated after difficult investigation on the basis of 1(b)(ii) of Article VI, i.e. the cost of production plus a reasonable addition for selling cost and profit. Because of the nature of the export/import transaction, however, the decision regarding the addition for selling cost and

profit must necessarily involve an element of judgement. Legislation which specifies the margins for selling cost and profit to be applied in these instances is not likely to be a satisfactory solution in the main because the circumstances can vary so much between products and transactions.

Even when "normal value" can be established, the authorities are still confronted with the question of what is the actual selling price of the imported goods. As the companies involved are often organizations which exchange a wide variety of goods and services over international boundaries, the complexity of these relationships is such that it is difficult to establish the actual values in particular transactions.

When large international corporations are the sole consumers of specific components they may choose to dump exports for assembly, by charging only marginal costs. and thus, in effect, preclude the establishment of a domestic supplier. Similar problems arise in regard to the transfer of capital equipment between associated companies.

II. Limitation criteria

A. Percentage limit

It has been suggested that an international code should provide that, where the margin of dumping is within a certain minimum, anti-dumping action should not be taken. The concept behind this suggestion is that certain minimal levies would create difficulties for all concerned without providing useful relief to the domestic producers. While there is merit in this suggestion regarding some situations, it would seem to be impractical to set a mandatory minimum which would be appropriate bearing in mind the variety of goods involved and the price differentials that are critical to a shift in purchasing patterns.

B. Alignment of export prices

The suggestion has been made that anti-dumping action should not be taken against an exporter who dumps his product into an import market to meet the competition of another foreign supplier who is not dumping. The rationale for this suggestion is that, if anti-dumping action were taken against the exporter who is dumping, the goods would be imported at the same price from the foreign supplier who is not dumping and the position of the domestic producer would not be improved. This concept assumes that the foreign supplier who is not dumping is able and willing to supply a larger quantity at the same price; it also assumes that in a given situation it is possible to distinguish which exporter is setting the price. Circumstances vary so between cases that it would not be practicable to adopt it as a general principle.

III. Concept of material injury

The GATT recognizes that dumping is to be condemned if it causes or threatens material injury to an established industry or materially retards the establishment of a new one. Action to offset or prevent such injurious dumping is specifically authorized. The concept of injury itself is reasonably clear. However, it would be difficult or impossible to define "material" or "threatens" in terms of universal applicability. Of necessity account must be taken of the circumstances. Whether or not dumping (whether persistent or sporadic) will cause injury, and if so whether or not the injury will be "material", depends on many circumstances. These include the relative size and competitive power of the firm or firms doing the dumping and the firm or firms whose domestic market is being dumped upon. The Canadian authorities believe that large, highly capitalized corporations are unlikely to need protection against the supposed threat of injury from dumping, and that, on the other hand, industries in the early stages of organization require effective protection. Any anti-dumping system should be based on a concept of injury which reflects both the general requirements of Article VI and the particular circumstances of the economy concerned.

IV. Sporadic or intermittent dumping

The paper which Canada previously submitted (TN.64/NTB/W/9) 6 April 1966, sets out the issue of sporadic dumping. In the Canadian experience, this problem can only be dealt with effectively by a law which makes it clear that where sporadic dumping is found, anti-dumping duties, if required, will be applied quickly to the importations involved. This is a matter of great concern to Canada, and possibly to other countries which have relatively small markets and which may be adjacent to large and highly advanced economies.

V. Definition of industry

A. Product coverage

Suggestions have been made that "domestic industry" in terms of an international code should be so defined that the authorities investigating the impact of the dumped imports would not limit their examination to the effect upon production of the identical product but would look at the situation in regard to the production of goods of the same general class. The effect of dumped imports upon domestic producers, however, can vary widely depending on the volume and price of the dumped goods and the size, diversity of production and financial resources of the firms that make up the domestic industry. It is open to question whether an industry can be defined in terms of product coverage more specifically than say "producers of competitive products".

B. Geographic coverage

This is also an area where it is difficult to make simple rules. While a regional definition of industry may be justifiable in certain circumstances, it should be limited to cases where it reflects genuine geographic and economic distinctions.

IX. International procedures

The suggestion has been made that there is a need for an international examination of anti-dumping actions. Articles XXII and XXIII of the General Agreement already provide procedures which countries can follow if they consider anti-dumping measures are being improperly applied.

X. Third country dumping

Article VI:6(b) provides for anti-dumping action by one country to protect the interests of a supplying country, presumably one that is not dumping, from the exports of another country that is dumping. It is noted that this provision is permissive and should be retained in this form.

XI. Countervailing duties

It is understood that this subject will be considered after the discussion of anti-dumping practices has been concluded. The Canadian delegation will comment on this subject at that time.

XIII. Possible international agreement

The problems of dumping and the measures that are required to deal with them are extremely complex. They carry strong economic and political implications. Any collective action which might be contemplated should recognize that the problems of dumping cannot be resolved by a code that does not adequately take into account the needs of countries with small regional markets, relatively narrowly-based economics and special geographical situations.