

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 CHECKLIST

Addendum

Comments by Sweden on Items I-V, IX-X and XIII

I. Concept of dumping

A. Price discrimination criteria:

Determination of margin of dumping: price comparison taking into account conditions of sale and other factors considered relevant

GATT defines dumping as a transaction by which the products of one country are introduced into the commerce of another country at less than the normal value of the products. The normal value of a product is defined as the price of a similar product in the ordinary course of trade when sold in the domestic market or, in the absence of such a domestic price, either the highest comparable price when sold to a third country or the cost of production of the product plus a reasonable addition for selling cost and profit.

A decisive factor in considering whether a home market price exists or not should, in the Swedish opinion, be either that goods of the same kind should not be sold at all on the home market, or at least not sold amongst buyers and sellers that are independent of each other. The sales on the home market should be taken into account as long as they are not entirely negligible. Special difficulties arise in the case where the exporting country is a State-trading country.

When comparing prices it is of the utmost importance that all factors affecting the comparability of the prices be taken into account.

In the first place, comparisons must be made between identical products or in the absence of such products between products the physical properties of which are essentially the same. The differences should be so slight as to permit the differences in price caused thereby to be easily established in order

to limit the scope for discretionary appraisal as much as possible. Where insignificant differences exist, the resulting differences in price must be fully taken into account when comparing the prices.

The prices under consideration should also in all other respects be fully comparable. Thus the comparison must refer to prices at the same level in the trade, on the same date and locally considered at the same point in the exporting country. In principle, the last-mentioned common point should be the one that requires as few adjustments as possible in relation to the prices used as a starting-point thereby limiting the scope for discretionary cost appraisals. As a starting-point the most suitable reliable price should be chosen for which satisfactory documentation is available.

When it comes to the adjustment of the prices chosen for comparability, all factors have to be taken into account which may affect the costs, such as differences in duties and purchase tax, in advertising and other sales costs, and in quantities sold (quantity discounts). In this context valuable examples are to be found in the United Kingdom Draft Code.

In the event that one has to resort to a comparison with the highest third country price it should be borne in mind that according to varying commercial conditions a certain price differentiation would seem to be normal. To apply this criterion too rigorously could lead to unsatisfactory results. In the Swedish opinion it is questionable whether, in applying this basis for comparison, the exporter should not in each case be given the opportunity to prove that the export price is not lower than the costs of production.

Finally, as regards the criterion of the costs of production as a basis for comparison, great difficulties no doubt exist in the wording of clear and comprehensive rules to promote correct and uniform results. This is particularly the case as regards the distribution of research and development costs with a reasonable margin for profit.

B. Hidden dumping by associated houses:

1. Goods imported for resale.
2. Other goods.

If an importer, who has an economic interest jointly with an exporter, sells an imported commodity at a price below that of the invoice price, and at the same time below the value of the commodity (the exporter's home market price, etc.), this should be considered as a case of dumping. The price comparison for establishing the dumping margin should have the retail price as a basis. This should equally apply to sales from a consignment stock.

Analogous with the above, dumping should, in principle, be considered to exist also in respect of goods which are not resold, should any form of price compensation be given by the exporter apart from the invoice price to an extent which brings the final price below the normal value of the product.

II. Limitation criteria

A. Percentage limit

Taking into consideration the varying circumstances in different cases and the varying elasticity of the price in different fields, the Swedish opinion is that there should be no other limitation beyond the right to take counter-measures than what follows from the requirement of dumping (selling at a price which is lower than the normal value), and material injury caused thereby should be established. Naturally this does not prevent that the relative size of the dumping margin may be of importance when establishing the extent of the injury.

B. Alignment of export prices

One of the aims of GATT is to further economic growth, and one of the means to achieve this is to promote more liberal conditions in international trade, thereby extending the competition. The more firms that compete in a market, the stronger the competition will become. At the same time the firms are forced to adapt themselves to a condition of competition existing in the market, *inter alia* as regards prices. For commercial reasons such an adaptation on the part of the exporters should, in the Swedish opinion, not be prevented as long as material injury is not thereby caused to the domestic industry.

In order to vouchsafe a reasonable scope for such price adaptation it would have to be accepted that anti-dumping duty must in no case be charged to an amount exceeding that which is required to bring the price to a level where any injury ceases to exist. Should injurious dumping take place from several directions, the duty should, in each case, be limited to the difference between this level and real export price. A suitable system applicable in this case is the so-called basic price method, as described in our earlier statement under point VI C.

III. Concept of material injury

A. Possible elements to be examined in this context:

Profits - sales - market share - employment.

The question of the grounds on which the estimate of the injury should be based is a crucial one but hard to define because of the varying circumstances in different cases. It is obvious that rules in this respect must be of a comparatively general character, more or less in the nature of guidance. As examples of indications of injury could be mentioned such criteria as stock-piling, considerable reduction in orders and employment difficulties.

Since it is the Swedish opinion that anti-dumping measures should be resorted to only in cases of emergency, any rules that may be established relative to the estimate of injury should be generally restrictive in character. Consideration must be given to the effect on the total sales of the industry. If comparison is made with the conditions prevailing in a market before the dumping, it should be taken into account whether in this case normal competition existed or not. Of importance is also that other possible reasons to the situation having deteriorated be taken into account.

B. Concept of threat of material injury

GATT condemns dumping whereby the products of a country are "introduced into the commerce of another country at less than the normal value of the products" if it threatens to cause material injury. In the first place this would seem to imply that existing dumping which does not require any intervention is feared to undergo a change, to its extent or its character, so that serious material injury threatens to occur. Even a sales offer at a dumped price could lead to injury. It is very difficult, however, to decide whether a sales offer will result in import taking place or whether it is even serious, and an intervention based only on suspicion cannot be considered as justified. If it can be proved, however, that serious sales contracts have been concluded on terms that imply dumping and would result in material injury should importation be carried out on those conditions, counter-measures would seem to be justified.

Generally speaking, in judging a menacing situation greater restriction than is normal seems to be indicated.

C. Concept of retardation of establishment of industry

D. Concept of retardation of development of an industry

The first effects of dumped imports would generally seem to be that the establishing of a new industry is delayed or that the rate of development of an existing industry is reduced. Effects of this character no doubt may also

cause injury to the economic life of a country. Taking into account the difficulties in making fair estimates, the greatest restriction should be observed as regards claims to take steps on these grounds.

IV. Sporadic or intermittent dumping

This question refers to those problems which arise through the tendency to export products which are of inferior quality or occasionally occurred surpluses at dumped prices. According to the Swedish opinion a decision to apply an anti-dumping duty should not be taken unless the injurious effects of the dumping have been investigated and found to be of such a character in the case in question that counter-measures are justified.

V. Definition of industry

A. Product coverage

GATT condemns dumping if it causes material injury to an industry already existing in the importing country, or seriously delays the establishment of a domestic industry.

In the rules no provision is made relative to the damaging effects on the manufacture of a certain product but only to the effects on the industry as a whole. The estimate of the injury should therefore not be limited to the manufacture of a single article unless this manufacture quite naturally can be described as a branch of industry from the points of view of production processes and calculations. The possibilities to settle this question clearly in an anti-dumping code seem to be limited. Amongst other things the estimate must be conditioned by the structure of the industry in the country in question. The more specialized the private enterprises are, the easier it seems to be to regard these as a special branch of industry. In the Swedish opinion too rigid a way of looking upon this should not be adopted.

B. Geographic coverage

1. Nation-wide
2. Regional
3. Integration areas

Normally, the injuries of dumping should be judged on the merits of the effect on the industry concerned in the country as a whole or in any event the main part thereof. Where the effects of the dumping are limited to a geographically defined market area of a country where similar products from other parts of the country are not competitive - due to transportation or other special reasons - a modification of the first-mentioned rule would seem to be

justified. As regards integrated areas, such as customs unions with a common external tariff and a free exchange of goods within the area, it may be natural to apply the main rule and to consider the effects on the industry concerned in the area as a whole.

IX. International procedures

Possibility of examination of anti-dumping actions within the GATT framework.

According to GATT each contracting party shall afford adequate opportunity for bilateral consultations regarding any matter affecting the operation of the agreement. Should such consultations not yield results the question could be referred to the CONTRACTING PARTIES, which shall investigate the possibilities of finding solutions.

Sweden considers it doubtful whether it would be appropriate to establish any kind of regular procedure of notification, consultation and confrontation. At any rate a final view in this context could be taken only when some clarity is at hand regarding the status and the content of a possible agreement on an international code in the matter.

X. Third country dumping

When considering anti-dumping measures in favour of a third country the same restrictive basis for the estimate should be applied in appropriate parts as when measures of protection of domestic industry are considered. It is the Swedish opinion that the injurious effects should be estimated in relation to the total amount of sales of the third country industry.

XIII. Possible international agreement

A. Need for agreement

B. Form of agreement

In some countries present legislation and practice in the field of anti-dumping constitute serious barriers to international trade. If it is possible during the course of the actual discussions to reach acceptable solutions, characterized by a principle of restrictive application of the anti-dumping instrument, such an agreement can be considered to fill an urgent need.

As to the form of an agreement it would be of value if it could be of a clearly committing character. Should this not be possible it would in any case be desirable to make such an agreement in the form of recommendations, even if these are of a less obligatory significance.