

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TN.64/NIE/W/12/Add.9
8 July 1966

Special Distribution

Sub-Committee on Non-Tariff Barriers

Original: English

Group on Anti-Dumping Policies

ANTI-DUMPING CHECKLIST

Addendum

Comments by Australia on Items I to V and IX to XIII

ITEM I - CONCEPT OF DUMPING

Australia considers that the proper use of anti-dumping powers is in the circumstances stated in Article VI of the GATT, that is, where the importation of goods at less than the normal value causes or threatens material injury to an established domestic industry or materially retards the establishment of a domestic industry.

Power to protect against material injury from import of goods at less than normal value including intermittent or sporadic dumping, end of season or surplus disposals, and all forms of "hidden dumping", is particularly important to a country like Australia which is not yet mature industrially, has a small domestic market and bases "legitimate" tariff protection for its domestic industry on normal values in competing countries. For the same reasons, as previously stated in relation to checklist items VI(D) and VII, Australia must be in a position to take provisional anti-dumping action and, under certain conditions, to apply anti-dumping duties retroactively.

At the same time Australia believes that the use of anti-dumping powers should be permissive (as provided in Article VI) and not obligatory. The appropriate authorities in importing countries should be free to decide whether anti-dumping action should be taken in any particular case, or whether to resolve particular problems by other means mutually acceptable to the countries concerned.

The purpose of anti-dumping action of any kind should be to remove the cause of material injury. In the case of a country which bases the level of its protective tariff on normal prices in competing overseas countries, the measures necessary to achieve this generally involve the imposition of anti-dumping duties equal in amount to the difference between the export price of the goods and their normal value, i.e. equal to the margin of dumping. In establishing this margin, due allowance should be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

As recognized in the Rationale to Provision 8 of the United Kingdom Note on a Draft International Code on Anti-Dumping Procedure and Practice (Spec(65)86, 7 October 1965), there are circumstances in which the calculation of the export price of imported goods should be based on the wholesale price or the price to the final consumer or user rather than on c.i.f. or f.o.b. price.

ITEM II - LIMITATION CRITERIA

A. Percentage limit

It is considered that no limits should be set to the amount of anti-dumping duty currently permitted under Article VI of the GATT; countries should be free to impose anti-dumping duty up to the level of the full margin of dumping.

B. Alignment of export prices

The alignment of export prices to meet competition from other sources should not, of itself, justify exemption from anti-dumping measures. But it should be borne in mind that the purpose of anti-dumping action is to remove the cause of material injury. Where the actions of one exporter put other exporters in the position of having to align their prices downwards, or lose their share of the market, the latter suppliers should not necessarily be penalized by the action taken against the initial dumper.

Alignment of export prices, however, could lead to several supplying countries progressively reducing export prices to compete better with each other in an importing country's domestic market. When the importing country has little or no shortfall of requirements normally supplied by imports, the resultant damage to domestic industry could well be severe.

ITEM III - CONCEPT OF MATERIAL INJURY

A. Possible elements to be examined in this context: profits, sales, markets share, employment

Changes in such elements as profits, sales, market share and employment would be significant indicators of material injury to a domestic industry. In certain circumstances one element alone could be a sufficient indicator of injury - for example, a fall in prices to an unprofitable level while the other elements remained unchanged could still result in material injury to the industry concerned.

B. Concept of threat of material injury

The offer of imports of dumped prices can present a threat of material injury to domestic industry through a diversion of orders from local producers. Similarly, there may be a threat of material injury by the pressure exerted on domestic prices merely by the offer of imports at less than normal value.

C. Concept of retardation of establishment of industry

The concept of retardation of the establishment of an industry is allied to the concept of a threat of material injury - for example, a depressed import price may discourage the establishment of a new industry which under normal import competition would offer a profitable investment. The opportunity should be open for an industry to become established with the expectation that competing imports will be priced on the basis of normal values and transport charges.

Furthermore, it is considered that importing countries should be free to take anti-dumping action in sufficient time before local production commences to ensure that stock-piled imports at dumped prices do not pre-empt the domestic market for a considerable period.

D. Concept of retardation of development of an industry

1. Industries with small domestic markets

2. Other

The danger of injury from dumping is ever present during the course of a country's industrial growth. In particular, the development of capital intensive industries, usually faced with high initial unit costs and requiring high usage of production capacity for economic operation, can easily be retarded by the importation of goods at dumped prices. In addition to the

vulnerability of these developing industries to all forms of price discrimination, including the manipulation of transport charges as well as export prices, there is the incentive for exporting countries to sell the products of their own capital intensive industries at reduced prices to maintain optimum levels of output.

The dangers of this situation are increased when the development of an industry is dependent mainly on sales in small domestic markets, catering for a population moderate in number and widespread in distribution. In these circumstances, single shipments of imports at dumped prices can result in a serious setback to a developing industry.

While the concept of material injury to domestic industry is of prime importance in formulating anti-dumping procedures, its complexity and variation in effect between different industries makes any precise definition impracticable.

ITEM IV - SPORADIC OR INTERMITTENT DUMPING

A. Seasonal movement in sales and prices

B. Other

Seasonal movements in sales and prices may be tolerable between countries in which the seasons coincide; however, when such trade crosses the Equator, end-of-season disposals in the exporting country coincide with start-of-season sales in the importing country and therefore exert the maximum disruptive effect. The danger is intensified when the domestic markets and industries of the importing country are relatively small scale and vulnerable to dumped competition. In these circumstances, any benefit to consumers in that country through the temporary availability of low priced goods is more than offset by the long-term disruptive effects in the local markets with the resultant damage to the whole economy.

In Australia's experience sporadic dumping occurs not only in respect of consumer goods or under "end-of-season" conditions. Temporary surpluses of any goods, particularly those produced in the capital intensive industries in exporting countries, can give rise to sporadic "hit and run" dumping.

Isolated dumping, resulting from the disposal of surplus goods because of seasonal or other circumstances in the exporting country, can present the same threat to domestic industry as other more frequent or persistent forms of dumping. Countries should be free to bring it within the scope of official anti-dumping procedures.

ITEM V - DEFINITION OF INDUSTRY

- A. Product coverage
- B. Geographic coverage
 - 1. Nation-wide
 - 2. Regional
 - 3. Integration areas

The United Kingdom Draft Code (Provision 12) appears too restrictive in dealing with the definition of an industry product coverage. There would be practical difficulties in defining an industry in terms only of product coverage. Anti-dumping procedures should be sufficiently flexible to prevent injury to isolated industries which, because of their location, have a small output and supply a small local market, and are therefore vulnerable to injury from shipments of dumped imports in their market area. These circumstances apply particularly in countries such as Australia where there are long distances between population centres.

ITEM IX - INTERNATIONAL PROCEDURESPossibility of examination of anti-dumping actions within the GATT framework

The appropriate authorities in the importing country are the people best placed to decide whether, in the context of Article VI, the circumstances of any particular import warrant anti-dumping action. All such decisions should be consistent with a critical examination of the evidence and the exercise of impartial judgment.

Present Article VI of the GATT provides safeguards for contracting parties against arbitrary and extreme use of anti-dumping procedures. The provisions in the General Agreement for appeal to the contracting parties should adequately safeguard the interests of exporting countries. Any specific provision for the international supervision of anti-dumping procedures appears unnecessary.

ITEM X - THIRD COUNTRY DUMPING

It is recognized that the importation of goods at dumped or subsidized prices can cause or threaten injury to the trade of a third country in the importing country's market. Third countries should be free to request that anti-dumping action be taken in their interests.

ITEM XI - COUNTERVAILING DUTIES

The investigation procedures and public inquiries into questions of subsidized goods causing or threatening injury should be carried out in the same way as dumping investigations and inquiries. The amount of countervailing duty in respect of any goods should not exceed the amount of financial assistance accorded to the goods. Powers to impose countervailing duties should be permissive not obligatory.

ITEM XII - OTHER

No comment.

ITEM XIII - POSSIBLE INTERNATIONAL AGREEMENT

- A. Need for agreement
- B. Form of agreement

Australia considers that there are no pressing reasons for introducing an International Code on Anti-Dumping Procedures. The provisions of Article VI of the General Agreement are sufficient.