

GENERAL AGREEMENT ON TARIFFS AND TRADE

CONFIDENTIAL

MTN/INF/30
30 June 1978

Special Distribution

Multilateral Trade Negotiations

Original: English

ANTI-DUMPING DUTIES

(Circulated at the request of certain developing countries)

1. BRIEF HISTORICAL BACKGROUND

1.1 When the Agreement on The Implementation of Article VI of the General Agreement (the Anti-Dumping Code) was negotiated in the Kennedy Round, the developing countries had, in the last meeting of the Working Group, made reservations in the Code as "it was not possible to reach an agreement on the inclusion in the Code of special provisions to meet their specific problems".

1.2 Subsequently, in September 1970, the GATT Council established a Working Party on the Acceptance of The Anti-Dumping Code to examine "special problems of developing countries" and "any proposals for the solution of these problems which might lead to the wider and early acceptance" of the Code. The Working Party held a number of meetings from September 1971 to October 1975. The Working Party was however not able to reach agreement on the proposals that were made by developing countries.

2. IMPACT OF ANTI-DUMPING ACTIONS ON TRADE OF DEVELOPING COUNTRIES

2.1 There have been, in recent years, a number of cases where anti-dumping investigations have been initiated in developed countries against firms from developing countries.

3. SPECIFIC PROPOSALS¹

(a) Differential treatment

3.1 The Anti-Dumping Code should specifically provide that in the area of anti-dumping actions, it is both feasible and appropriate to extend to the developing countries, special and more favourable treatment.

¹These proposals are not exhaustive.

(b) Concept of dumping

3.2 Article 2(a) of the Anti-Dumping Code states that "the product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value if the export price of the product exported from one country to another is less than the comparable price in the ordinary course of the trade for the like product when destined for consumption in the exporting country". This definition of "normal value" poses special problems to the trade of developing countries as in the case of a large number of products exported by these countries, domestic prices are generally higher and have no direct relationship with the prices at which the goods are sold by them in international markets. This situation arises, inter alia, from the following factors:

- (i) In the case of developing countries because of the structural imbalance arising from the development process, inadequacies of technology, insufficient transport facilities, weak marketing and distribution services and also measures taken for balance-of-payments reasons or developmental purposes, the prices of domestically produced and imported essential raw materials as well as intermediate products, rule at artificially high levels. In order to compete in international markets, however, efforts are made to insulate the export production from the stresses and strains to which the domestic economy is subjected, through the adoption of schemes which enable exporters to get adequate supplies of imported essential raw materials and intermediate products at international prices where internal prices for such materials are high, as well as by giving priority to the requirements of export industries in the allocation of domestic material resources.
- (ii) To raise revenue to finance their developmental programme, the developing countries, in many cases, have to impose relatively high customs duties and fiscal charges, both on imports of raw materials used in the manufacture of goods as well as on the finished products. These indirect taxes and charges are levied not only by the central government, but in the case of federal governments, by the State or provincial governments, as well as by other local authorities. Though under the rules of the General Agreement, such taxes are refundable on exported products, it is generally not administratively feasible to correct the situation through the procedure for the granting of drawbacks and refunds because of the multiple points at which these taxes are levied.

3.3 To provide a solution to the problems which developing countries encounter because of these special characteristics of their economies, it is necessary to provide in the Code, that in cases where products are imported from developing countries, the "normal value" should not be determined on the basis of the domestic price provisions of Article 2(a). It should be

further recognized that in accordance with the provisions of Article 2(d), "the particular market situation", which does not permit proper price comparison of export prices with domestic prices in the exporting country, always exists in the case of developing countries. Consequently, where the question arises as to the "normal value" of goods exported by developing countries, such normal value shall be determined by comparison with a comparable price of the like product exported to any third country. The price for the determination of normal value should not however be calculated on the basis of the cost of production.

(c) The determination of material injury and definition of industry

4.1 Article 3 of the Anti-Dumping Code, inter alia, provides that the determination of injury should be made only when the authorities concerned are satisfied that the dumped imports are demonstrably the principal cause of material injury or of threat of material injury to domestic industry, or the principal cause of material retardation of the establishment of such an industry. The Article further lays down some general criteria for the valuation of the injury.

4.2 The legislations as well as procedures and practices followed in the administration of anti-dumping are, however, not in all cases in conformity with these provisions in the Code. Furthermore, though the Code lays down some general criteria for the evaluation of material injury, it does not contain any specific definitions of what constitutes "material" injury. This could lead to treating any injury which is more than the "minimal" as "material" injury to the domestic industry.

4.3 For effective and proper implementation of the Anti-Dumping Code, it is necessary for all developed countries to bring their legislations as well as practices adopted in the administration of rules and regulations in the field of anti-dumping in conformity with the provisions of the Code.

4.4 In addition, with a view to providing special and differential treatment to developing countries in the investigations of complaints of dumping made against firms from developing countries, the Code should provide for the following:

- (i) The provisions in the Code should be read with those in Part IV of the General Agreement, particularly that of paragraph 3(c) of Article XXXVII.
- (ii) No anti-dumping investigations should be initiated against imports from a developing country in cases where its share of the market is small.

- (iii) In cases where it is complained that dumped imports from firms in developed countries and from firms in a developing country or countries are causing material injury to domestic industry, anti-dumping actions against the firms in the developing country or countries shall not be initiated on the basis of aggregate imports from all countries, against which action is contemplated. In such cases, investigations against firms in developing countries shall be commenced only if the imports from the firms in a developing country or countries concerned was demonstrably the principal cause of the material injury to the domestic industry.

4.5 In the investigations of complaints of dumping against imports from developing countries, account shall be always taken of the interest of the exporting country, the importance of the particular industry to its economy, the employment situation in the exporting country, its trade balance with the importing country concerned, the overall balance-of-payments situation of the exporting country, and its trade, development and financial needs.

(d) Price undertakings

5.1 Article 7 of the Code provides that anti-dumping proceedings may be terminated without the imposition of anti-dumping duties or provisional measures upon receipt of a voluntary undertaking by the exporters to revise their prices so that the margin of dumping is eliminated or to cease to export to the area in question at dumped prices. The Article should, especially in the case of developing countries, in addition provide:

- (i) Firstly, that in cases where firms give price undertakings, they would not be required to restrain their exports; and
- (ii) Secondly, that no price undertaking would be demanded in regard to products which are subject to export restraint arrangements.

(e) Multilateral surveillance of anti-dumping actions

6.1 In order to ensure an effective multilateral surveillance of the anti-dumping actions affecting imports from developing countries, the terms of reference of the Committee on Anti-Dumping practices, established under Article 17 of the Code, should be revised to provide, inter alia, the following:

- (i) The authorities responsible for the examination of complaints and the initiation of anti-dumping actions in accordance with the provisions of Article 6(f) of the Code, shall, when notifying the representatives of the exporting country and the concerned exporters and importers, notify simultaneously the Anti-Dumping Committee of decisions relating to the initiation of anti-dumping investigations, particularly in cases where such investigations are commenced against firms from developing countries.

- (ii) The GATT secretariat shall circulate these notifications to the members of the Committee and specifically bring them to the attention of the delegations from developing countries which have an export interest in the product.

6.2 The Code should provide that in the examination of any matters relating to the administration of anti-dumping affecting trade interests of developing countries, the Committee shall specifically examine the extent to which the provisions relating to the extension of special and differential treatment to developing countries have been complied with.

7. ANTI-DUMPING ACTIONS BY DEVELOPING COUNTRIES

7.1 Special provisions may have to be elaborated for the application of anti-dumping measures by developing countries having regard to their trade interests and to the implications which sales by transnational corporations may have on the establishment and development of industries in these countries.