

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/143

10 March 1978

Special Distribution

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

STATEMENT BY THE REPRESENTATIVE OF EGYPT

The statement made by the representative of Egypt, in the meeting of the Group "Non-Tariff Measures" on 21 July 1977, on anti-dumping is being circulated at the request of certain delegations from developing countries.

At the last meeting of the Group, the delegations from developing countries were requested to indicate the exact nature of the problems which they encounter in the area of anti-dumping practices and to come out with specific suggestions for modifications in the Anti-Dumping Code. Such a discussion, it was thought, would enable this Group to know more clearly why the developing countries are pressing for the establishment of a separate sub-group on anti-dumping practices. In response to this request I shall try in my intervention today to be specific.

The first point I would like to make is that contrary to the impression which many members of the Group appear to have, there have been in recent years a number of cases where anti-dumping investigations have been initiated in the developed countries against the firms from developing countries. In the last meeting certain delegations maintained that the developing countries generally did not encounter any problems in this area as there have been only marginal cases where anti-dumping investigations were initiated against firms in developing countries. I would suggest to have a look at the records of the anti-dumping committee and to prepare a list or a statement of cases in this respect.

Such a list or statement would reveal that anti-dumping investigations could last anywhere between two and three years. Generally speaking when the anti-dumping investigations are initiated there is a reluctance on the part of the importers to import from countries or firms against whom investigations have been started.

The commencement of the investigations thus does constitute a very serious barrier to trade. This is more so in the case of developing countries as there is for various reasons general reluctance on the part of importers in developed countries to order goods from firms in developing countries. I would also say that any document prepared refers only to cases where anti-dumping investigations were actually commenced. It would not include cases where complaints about dumping were made, but the cases were dismissed after preliminary investigations. I am saying this to avoid the impression which seems to be generally there, that the developing countries as such do not encounter any serious problems in the field of anti-dumping.

I would now like to deal with some of the specific proposals which we have for modifications in the Anti-Dumping Code. The Group is aware of the specific proposals which my delegation and the delegation of India have made in the Working Group on the Acceptance of the Code. We consider that the definition of dumping contained in Article VI of the General Agreement and Article 2(a) of the Anti-Dumping Code, which leads to a presumption of dumping in all cases where the home market price is higher than the price at which goods are sold in the foreign markets, creates special problems to developing countries. We had in the past referred to the reason why in the developing countries prices for consumption in the domestic markets tended to be higher than those at which they marketed their goods in the outside markets. I do not intend to repeat these arguments, as in fact even in the Working Party there was acceptance at least on the part of some delegations of the validity of our arguments.

My delegation had, however, occasion to study and examine in detail the various proposals which had been made, when in the Kennedy Round the Anti-Dumping Code was being negotiated. As you are aware, only a few delegations from developing countries had been able to participate in the negotiations relating to the adoption of the Anti-Dumping Code, and even those who participated started taking some interest only in the last phase of the negotiations. On going through the various proposals which were made at that time, we found that even then some delegations had pointed out the limitations of the existing GATT definition of dumping. The United States in particular had made two proposals for the revision of the GATT definition in order to avoid spurious complaints being made about dumping by outside firms, simply on the grounds that the domestic prices for consumption in the exporting country were higher than the prices at which goods were being sold in the outside markets. The first proposal required that goods should not be treated as being dumped, when the difference between home market price and the foreign or export price was small or marginal. Secondly, they proposed that cases where firms charged prices, which though lower

than the home market price were comparable to the prices prevailing in the importing country, should not be treated as dumping provided that the exporter of the product does not increase his share of the market. In support of their proposal they had stated, and I am quoting here from the GATT documents relating to the Kennedy Round of Trade Negotiations as follows:

"... the alignment of prices on those of competitors is a common business practice both in domestic and foreign markets. The pricing of exports just low enough to permit them to compete with other sellers should normally be regarded as non-injurious and not subject to the initiation of an anti-dumping investigation."

These proposals were not then accepted. We, however, find some of the elements in the proposals of interest and we are examining them further. In the past discussion on the subject and especially in the Working Party on the Acceptance of the Anti-Dumping Code, we had explained that the firms in developing countries find it necessary to sell at marginal costs to penetrate new markets, but the prices quoted by them are not lower than the prices at which goods were being sold either by the domestic producers or by foreign competitors in the importing markets. We feel that as had been stated by the United States in their submission, this is a normal business practice and the GATT definition of dumping would have to be modified to take into account this situation. We are not at this stage making any definite proposals, but I thought that reference to the past proposals made by the United States would make this Group aware that it is not only the developing countries which are faced with the problem as a result of the present GATT definition which leads to the presumption of dumping in all cases where the home market prices are higher than export prices.

Firstly, we feel that there is a need for a greater degree of clarity and precision in the definition of material injury in the Code. The basic GATT philosophy is that the mere fact the goods were being sold at less than home market prices should not lead to anti-dumping action, unless it was clearly established that the so-called dumped imports were "demonstrably the principal cause of material injury". The criterion, however, is not always followed and it appears that in some countries the investigating authorities consider that any injury which is not "trivial or negligible" should be considered as material injury. Closely related to this is the question of how to determine practice whether dumped imports were the "principal cause" and, I repeat, the "principal cause" of the material injury. In the past discussions on the subject, some of us had argued that in determining whether imports are causing material injury, interests of small suppliers have to be taken into account. For instance, if imports of a

particular product from a particular developed country was worth, say, US\$100,000 and from my country, say US\$1,000, can it be said that the so-called dumped imports from my country were the cause of material injury?

I would like at this stage not to deal more specifically with this issue, but it is the view of my delegation that it is definitely necessary to further refine the definition in the Anti-Dumping Code of material injury. We also consider that any definition regarding material injury which might be adopted as a result of the discussions in the Sub-Group "Subsidies and Countervailing Duties" could have a considerable bearing on the revised definition which might be adopted in the Anti-Dumping Code.

Secondly, the Anti-Dumping Code should now clearly provide that in comparing home market prices with the export prices, due allowance should be made for any indirect taxes which are levied in the exporting country. Such allowance should be made not only in regard to taxes which are being borne by the exported product as such, but in regard to taxes which are levied on raw materials and components used in the manufacture of the final product.

Thirdly, we feel that the Code should recognize that generally speaking, anti-dumping investigations should not be initiated against products which are subject to a voluntary export restraint.

Fourthly, we feel that further improvements could be made in the notification and surveillance functions of the GATT in the area of anti-dumping practices. At present the Code requires that once the decision is taken to initiate anti-dumping investigations, representatives of the exporting country and the exporters and importers should be notified and that a public notice should be published. There is, however, at present no obligation to notify any such decision immediately to the GATT secretariat. We feel that further improvements in the review and surveillance functions of the Committee could be made particularly in relation to the cases involving developing countries, if in addition to notifying to the representatives of the exporting countries there was obligation to notify to the GATT secretariat the decisions relating to the initiation of anti-dumping investigations. This proposal is in keeping with the general approach which we are adopting in discussion in other groups for greater international surveillance of measures which affect the trade interests of developing countries.

I have tried to deal with some of the specific issues which our preliminary examination and investigations have revealed. We hope to come up with more specific proposals and suggestions when the Sub-Group is established and we start discussing these questions at a more technical and expert level.