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Group of Negotiations on Goods (GATT)
Negotiating Group on MTN
Agreements and Arrangements

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SUBMISSION FROM THE NORDIC COUNTRIES

The following submission was tabled by Finland, on behalf of the Nordic countries, at the Group's meeting on 5 November 1987.

I Introduction

According to the Negotiating Plan participants are requested during the initial phase of the negotiating process to indicate issues that they wish to raise with a view to improving clarifying and expanding individual MTN Agreements and Arrangements.

To this end and without prejudice to the possibility of submitting additional proposals for negotiation in the future the Nordic countries propose that the following issues be negotiated in the context of the Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade and the Agreement on Technical Barriers to Trade.

II Agreement on Implementation of Article VI

1. Introduced into commerce of another country, Article 2:1

There is no definition of the concept "introduced into commerce of another country". This has lead to a wide interpretation of that concept. This issue has therefore

been discussed on several occasions in the Committee on Anti-Dumping practices as well as in the Ad Hoc Group on the Implementation of the Anti-Dumping Code. In the view of the Nordic countries the general rule should be that an anti-dumping investigation be initiated at the latest stage possible, i.e. at the actual import of the alleged dumped product. However, the possibility should be given in certain exceptional cases to initiate the investigation at an earlier stage, e.g. after the submission of a binding offer.

The Nordic countries propose negotiations to reach consensus on the interpretation of the concept "introduced into commerce of another country".

2. Comparison of normal value and export price. Article 2:6

According to article 2:6 the normal value and the export price shall be compared at the same level of trade with due allowance made for differences in conditions and terms of sale, for differences in taxation, and for the other difference affecting price comparability.

Since this paragraph has been applied in different ways by Signatories to the Code the Nordic countries propose negotiations to reach consensus of how the calculation should be made in order to reach a fair comparison between the normal value and the export price.

3. Determination of injury. Article 3

Neither the General Agreement itself, nor the Anti-Dumping Code contain any provisions directly regulating the question of cumulative injury assessment. However, there are several provisions, which may have a certain relevance in this context.

Article VI:6 a) of GATT says that "the effect of the dumping ---- is such as to cause or threaten material injury ---". This provision might be interpreted to mean that in the case of dumping from several sources each dumped sale must have had the effect of causing injury, alone or in connection with other dumped sales.

The Anti-Dumping Code contains provisions relevant for examining the question of cumulative injury assessment. Article 3:1 stipulates that an examination must be made of the volume of the dumped imports and of their impact on domestic producers of like products. This provision might be interpreted as a support for the principle of cumulative injury assessment.

As no clear answer is given if and in which cases cumulative injury assessment might be applied the Nordic countries believe it would be of value to obtain a clarification on this point. In view of the Nordic countries negotiations on this issue should aim at establishing a restrictive practice of cumulative injury assessment.

4. Price undercutting, Article 3:2 and 3:4

The definition of dumping in the present Code is straightforward and simple: sales on export markets below the normal value as defined in Article 2 of the Code. The philosophy behind that definition is that an enterprise strong on its domestic market, either through import protection or dominant position, may reap the profits from that market and utilize surplus capacity for export sales at marginal prices. Thereby the exporter may influence and depress the price level in the importing country.

The question arises concerning the relevance of such an oversimplified thinking in today's business world. Although situations such as the one described above certainly exist, the Nordic countries believe that exporters are much more frequently faced with situations where they either have to accept the price prevailing on various foreign markets or to renounce sales on those markets. The question from the exporter's point of view is price adaptation, rather than price determination.

If it so happens that the price on the foreign markets or on some of them is lower than on the exporter's domestic market or on some other export markets, the exporter is faced with the threat of anti-dumping measures as a result of price adaptation.

The Nordic countries believe that some fresh thinking should be devoted to this problem and its possible solution and propose this issue to be negotiated in this Group.

5. Duration of anti-dumping duties, reviews. Article 9:1
and 9:2

There is no fixed time limit neither as to the duration of the imposition of anti-dumping duties nor as to the time when a review should be initiated.

Already when an anti-dumping duty enters into force the data on which it was based are out-of-date. This problem becomes more evident the longer the duty is in force.

The Nordic countries believe that the Code would be improved if provisions could be negotiated to the effect that a precise time limit be fixed for the duration of an anti-dumping duty and that a review would be obligatory after a certain period of time.

6. Recommendations

The Nordic countries believe that the incorporation of the following recommendations and understandings adopted by the Anti-Dumping Committee should be discussed

- definition of the word "related"
- transparency of anti-dumping proceedings
- procedures for on-the-spot investigation
- time-limits given to respondents to anti-dumping questionnaires
- best information available in terms of Article 6:8
- determination of the threat of material injury

7. Issues discussed in the Ad-Hoc Group on the Implementation of the Anti-Dumping Code

The Nordic countries believe that some of the issues which have been discussed previously in the Ad-Hoc Group on the Implementation of the Anti-Dumping Code merit further discussions also in this Group. The Nordic countries would therefore at this stage indicate that the following issues might be taken up for negotiation:

- Input Dumping
- Determination of Normal Values
- Constructed Value; 8 per cent Rule on the Calculation of the Margin of Profit
- Revision and/or Termination of Price Undertakings

- Use of Price Undertakings in Anti-Dumping Proceedings
involving Imports from Developing Countries

8. Input by the Secretariat

Finally the Nordic countries believe it would be very useful for the further work of this Group if the Secretariat would make a study of the half-year reports to the Anti-Dumping Committee covering a period of several years, say, since 1980. This would give more substance and a more precise picture of the problems involved. Such a study which should have the character of a statistical background note could be structured in the following way:

- which countries take anti-dumping measures?
- which countries are subject to anti-dumping measures?
- which product categories are subject to anti-dumping measures?
- how many of the initiated investigations lead to anti-dumping measures?
- for how long are such measures in force?

-III The Agreement on Technical Barriers to Trade

Recommendations and Decisions

The Committee has adopted a number of recommendations and decisions regarding the application of the Agreement. Some of these are of great value for the interpretation of certain Articles of the Agreement. The incorporation of a selection of the said recommendations and decisions into the Agreement would clarify and improve it and would to a certain extent expand the obligations of Parties. Among issues for consideration in this connection, the following would be mentioned: timing of notifications; time period for comments; testing; enquiries which the enquiry points should be prepared to answer.