

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE UNITED STATES

The following communication was tabled by the United States at the Group's meeting on 7 December 1987.

Review of Tokyo Round Antidumping Code

The United States considers that the participants in the negotiations under the Uruguay Round should seek to improve existing remedies and disciplines with respect to injurious dumping. The Tokyo Round Antidumping Code implements the provisions of paragraph 1 of GATT Article VI, which states in pertinent part:

The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.

GATT Article VI and the Antidumping Code therefore rest on the fundamental premise that injurious dumping is to be "condemned." For that reason, the GATT gives a contracting party a right under Article VI to take measures to prevent such dumping from occurring. The drafters of GATT plainly recognize that injurious dumping has the potential to undermine the international trading system. The Tokyo Round Code sought to build on Article VI by elaborating detailed procedures for conducting antidumping investigations and by expanding and clarifying the scope of antidumping remedies.

The United States believes that the Tokyo Round Antidumping Code made an important contribution to improving antidumping remedies and harmonizing international antidumping procedures. By adopting agreed time limits and procedures, the Code provided greater transparency to antidumping proceedings and aided injured industries in obtaining relief against unfair

trade practices. In addition, the creation of the Antidumping Code Committee created an important forum for international discussion of antidumping issues and for examination of potential improvements in Code procedures and remedies.

New Issues

The United States considers, however, that new issues have arisen since the Tokyo Round that should be addressed in the Uruguay Round MTN Agreements and Arrangements Negotiating Group. These new issues underline the need to build upon the Antidumping Code in order to fulfill the objectives and mandate of GATT Article VI. With this in mind, and without prejudice to the possibility of submitting additional topics in the future, the United States submits the following proposal for the Group's consideration.

Since the negotiation of the Tokyo Round, we have become concerned with practices that seem to defeat the intent of the Code to address effectively injurious dumping. We are especially concerned with such issues as exporters who repeatedly engage in injurious dumping and certain diversionary practices.

Increased Disciplines for Recidivist Dumping

While GATT Article VI and the Antidumping Code provide for the imposition of an antidumping duty to offset the margin of dumping, we are concerned that the Code may fail to adequately address the problem of "recidivist dumping." In particular, recent U.S. antidumping cases have focused increased attention on certain foreign companies that have repeatedly been subjected to antidumping actions and orders in the U.S. and elsewhere. It has been argued that these companies regard dumping as a cost of doing business. If so, the current Code is deficient in dealing with deliberate, repeated dumping. Because the Code's remedies are limited to the prospective imposition of an offsetting duty, we are concerned that current remedies may be insufficient to prevent repeat dumping.

While one solution is to deter such strategies by imposing severe penalties on companies that engage in repeated acts of dumping, such measures would appear to be inconsistent with Article 16 of the Code. Article 16 limits the remedies for dumping to the imposition of offsetting duties and appears to prohibit additional or alternative remedies.

Accordingly, we propose that the Group examine the clarification of Code remedies to permit increased disciplines for companies that engage in repeated acts of dumping. There are a range of possible solutions, including increased monitoring, accelerated antidumping remedies, and increased duties.

Avoidance of Antidumping Orders through Certain Diversionary Practices

We are also concerned about certain diversionary practices where the apparent purpose is to evade the antidumping order. This problem can arise when an antidumping order is issued against a product that can readily be exported in other forms. Such practices could undercut the purposes of the Code.

The United States recognizes that there are many problems and potentially serious pitfalls in seeking to address these sorts of practices. Some aspects of this issue in its broadest sense were considered by the Ad Hoc Group of Antidumping Experts. For example, the Group was of the view that input dumping remedies are inconsistent with the Antidumping Code. This view was set out in a "Draft Recommendation Concerning Input Dumping" (ADP/W/83/Rev.2) prepared by the Group. Nevertheless, the U.S. Government believes that at least some practices might be effectively addressed while avoiding some of the problems inherent in many proposed solutions. Thus, in examining the diversion issue, we believe that the Group should examine both the interest in effective antidumping remedies and the interest in avoiding unnecessary burdens on legitimate trade. Accordingly, the U.S. proposes that it would be useful for the Negotiating Group to consider whether the Code needs to be revised to deal with the problem of certain diversionary practices.

Article VI:6 and Article 6:5

In the context of related provisions of the Subsidies Code, at least two disputes have arisen between signatories over the question of what properly constitutes the "domestic industry" producing products "like" imported products under countervailing investigation. The review of GATT and Antidumping Code disciplines should focus on the relationship between the primary and processed agricultural product producers in certain processed agricultural product industries where the production of the primary agricultural product in question is dedicated to the production of the processed agricultural product.

Other Issues

The United States notes that other delegations have proposed negotiations with respect to introduction into commerce, cumulation, like product, and constructed value. The United States believes that these are complex and have many aspects. The United States has definite views on all of these issues and will provide such views as appropriate.