DUMPED AND LOW-PRICED EXPORTS

Definition of "dumping" and "low-price exports"

The term "dumping" was originally used in various economic situations where a country suffered from cheap imports, that means from imports which are cheaper than any production which would be possible under normal circumstances. Regarding the reason which made such a cheap selling price possible, various publications, and these include the League of Nations Study on Dumping, distinguish between social dumping - a dumping where low labour costs in an exporting country, very often linked with a low social standard, make cheaper prices possible - exchange dumping - where a devaluation of the currency disturbs the relation between the actual production cost and the selling price - and dumping due to price manipulations by the exporting firms or by the exporting State.

The incorporation of Article VI into GATT was the first time that an anti-dumping definition was made part of an international agreement. The definition chosen for this Article limits the right of governments to protect themselves against dumping to the third of the above-mentioned types of dumping and permits the levy of anti-dumping duties only in the case of under-priced selling by the firms (roughly speaking anti-dumping duties equalizing the difference between the domestic market price in the exporting country or the production costs if this price is not available - and the normal value) and in the case of State subsidies (countervailing duties). In the case of other low-price imports GATT does not permit the levy of any additional charges.

In the debate concerning this problem a lot of confusion arose from the lack of clarity concerning the terminology used. It would be a great help if a common terminology could be agreed upon for future discussions. My suggestion would be to limit the use of the words "dumping" and "anti-dumping duty" to the situations described in Article VI of GATT. While dealing with other cheap imports a new term should be created, e.g. low-priced imports.

A minor difficulty in terminology arises from the fact that some countries do not distinguish between anti-dumping duties and countervailing duties in the sense of Article VI. This mainly arises in countries whose legislation is older than the General Agreement itself. The solution for this problem would be to call all duties in Article VI anti-dumping duties and to consider countervailing duties to be a special type of these anti-dumping duties.

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Recent action by governments

In the last few years many governments have introduced anti-dumping provisions, or extended them so as to cover other situations than those envisaged under the previous legislation. In some instances countries introduced the GATT anti-dumping rules with a new tariff (e.g. Turkey) but most changes indicate a clear tendency to create possibilities to levy additional charges on cheap priced imports not dumped in the sense of Article VI. It has to be pointed out in this connexion that that trend might be due partially to the change from specific rates to ad valorem rates which took place in most countries and which eliminated the automatic anti-dumping effect inherent to specific duties.

The most primitive defence against low-priced imports is the re-introduction of specific duties. We encounter this tendency in the agricultural tariff of various countries and also in the textile field. An example is the Austrian draft customs tariff. Some mixed duties in force for example in Australia have a certain gliding effect, namely to increase with the decreasing value. In this connexion also, the German gliding duty on malt has to be mentioned. The best example, however, is the new Swedish agricultural tax system which ensures that products imported cannot be sold under minimum prices. This latter system is especially interesting for it not only provides for increasing tax rates with decreasing prices, but also for the application of quantitative restrictions, if the protective effect cannot be achieved by the tax.

The second method used to impose high rates on products considered to be imported too cheap, are the valuation provisions. The normal provision, that the value of an imported product can be increased to its real value, in connexion with the definition of the "actual or real value" leads automatically to a correction of the import price. It has to be understood, however, that the economic effect of this correction depends on the rate of duty. In the case of a product dutiable at 10 per cent, an increase of the value by ten units would only lead to an increase of the duty by one unit. Such a valuation provision gives a full anti-dumping protection only in the case of rates of duty 100 per cent or more. Many countries, however, although applying lower rates, try to arrive at valuation provisions which eliminate the full difference between the price considered to be abnormally low and the normal price. This seems to be the case in the so-called end-of-season provisions applied by some governments.

Another method is the introduction of provisions which, although very similar to the terminology used in Article VI of GATT, are meant to be applied to low-priced imports not dumped in the sense of this Article. The most typical example for this case is the recently introduced special tax by Belgium. The Belgian Government levies a tax which eliminates the price difference. This method linked with the issuing of import licences is in the practical application limited to countries with monopoly trade.
Another way to solve this problem has been realized by India who created State trading for parts of her trade so as to ensure that certain imports from State trading countries are handled by Indian State trading companies.

Reasons for the action taken by the government

The question under review is difficult due mainly to the fact that all tendencies to ensure minimum prices at importation are inevitably judged sceptically as possible measures to ensure high domestic prices; a criticism mainly pronounced in connexion with the protection of the agricultural production. For the purpose of this note, which is aimed at isolating the problem of unduly low priced imports, this question shall not be discussed further.

The following are cases which are generally considered to lead in certain circumstances to prices with which no normal competition can cope: firstly, the so-called end-of-season sales; secondly, imports from countries with low labour costs, e.g. India and Japan, and thirdly and mainly, imports from countries which do not base their prices on the production cost of a product, namely the Eastern countries with a planned economy.

End-of-season sales

The end-of-season sales are a limited problem. Certain groups of traders mainly in the United States sell out their stocks (e.g. in the textile field) at the end of the season at very low prices. Such sales are purposely directed against foreign markets so as to avoid disturbances on the home market. This, as well as the fact that they are very often handled by outside traders not held in very high esteem in their own country, probably explains why measures taken against such sales have never led to a complaint within GATT.

This problem does not seem to need any special action by GATT since in many instances the system of basing the customs value on the average price of such products over a longer period (e.g. the last six months) seems to lead to satisfactory results and also to be in conformity with the "actual value" required by Article VII.

Imports from low labour cost countries

The problem of low labour cost countries became especially apparent in connexion with the Japanese accession to GATT, due to the fact that many contracting parties had recourse to Article XXXV maintaining the right to discriminate against Japan. It also became visible in the case of the difficulties existing between Lancashire and the Indian textile mills.

In the case of this problem, which is mainly a problem of underdeveloped countries it has to be taken into account that the advantage such countries have due to their low labour costs - a situation which not always means low social standards - is very often counterbalanced by the lack of technical skill. Normally the traditional protectionist measures, mainly the tariff rates, therefore proved to be sufficient to cope with this problem.
Although Japan is a special case, due to the extended use of unfair competition some of its traders have made in the past and due to the fact that although in the sphere of underdeveloped countries it has the advantage of very extended technical equipment, it is nevertheless a problem closely linked with the special situation given in underdeveloped countries. Attention can be drawn to the fact that for avoiding a situation such as before 1938, where Japanese goods were excluded from many markets and dumping pressure on the remaining markets became unbearable, agreements seem to be under preparation which provide a satisfactory distribution of Japanese products between its traditional markets at reasonable prices by a voluntary Japanese export control.

Imports from monopoly countries

The situation given in the case of low-price countries, such as India is quite different and has to be clearly distinguished from the relation with countries with a planned economy. While the production capacity and price structure of such countries are well known, no possibility exists to obtain similar information regarding the Eastern countries with a planned economy. Two things, however, are certain: one, that the price in countries with a planned economy has quite a different function as compared with the price in a free economy. While in countries with a free economy the price is always built up on the basis of the production costs, prices are determined in countries with a planned economy under quite different considerations. Although even in such countries the total of the economy has to lead to a favourable balance between production costs and the return from the distribution - the prices at the various stages of the movement of products might be dictated by quite different considerations. It might, therefore, very well occur that a very cheaply produced product can be obtained, on the internal market, under luxury or other considerations only at high prices very often a multiple of the production costs,

The export price for such products, on the other hand, is fixed, as all other prices, by the government. To maintain the competitive power such prices are normally fixed at a level corresponding to the average export prices of comparable products in countries not having a planned economy. It is obvious that for increasing the competitive power such prices might sometimes be fixed under the average price level. Scarce or luxury products, on the other hand, might only be obtainable at prices much higher than domestic market prices, much higher also than production costs (uranium, caviar).

Countries not having recourse to a planned economy are afraid that such a situation might, in the case that export and domestic prices are lower than the production costs, lead to cheap imports which disturb the domestic market, and since this situation is not covered by Article VI, do not permit the

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1 This term is used as an abbreviation for countries having a total state trading system.
application of anti-dumping duties. The countries having a planned economy on the other hand, are afraid of seeing their products subjected to anti-dumping duties based on a comparison with abnormally high domestic market prices. This situation shows that both groups are interested to arrive at a clear solution, which takes care of this special situation. It is worthwhile noting that the Czechoslovak Government, the only representative of a country within GATT with a fully state directed economy, drew attention to this difficulty at the Review Session when it asked for the addition of an explanatory note to the revised Article VI, which reads as follows:

"It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate."

Possible action by GATT

While no immediate action seems possible or necessary in many of the instances described above, the problem concerning trade with countries having a planned economy seems to make urgent decisions necessary, due to the importance which this trade soon might have. It is also necessary to avoid having a situation where a number of countries live in a permanent breach of GATT in so far as their relation with certain GATT members, having a planned economy, is concerned. GATT could also go beyond a correction of the existing legal situation and try for the first time to ensure normal commercial relations between these groups of countries.

In the field of promotion of trade with the Eastern countries, GATT cannot become active, firstly due to the fact that this field is widely covered by another organization, and that a decision concerning the trade with the Eastern governments has to remain in the political sphere of the governments involved.

If governments, however, decide to import certain products from state monopoly countries no rules exist which ensure a fair exchange of goods. This gap could and should be closed by the GATT which, for that purpose, would have to introduce special provisions for such a case: provisions to which the governments would have to conform in their national legislation and administration. It is not attempted at this stage to go into the details of such a provision which would have to be carefully worded. Only the following main problems should be indicated.

The provision would have to be clearly separated from the rules dealing with anti-dumping duties. The necessary definition of "normal value" would have to be meticulously elaborated. Whatever legal wording chosen,
however, and to which Article such provision would be linked, it would have to
provide for the possibility for the countries to levy an additional charge
which will raise the prices of imports from monopoly countries to a normal
level, measured against prices in other countries with a comparable production.
Such a solution would automatically lead to consultations between the interested
governments concerning the height of the prices, a fact which should lead to
satisfactory results for both parties.

Without going too much into details it should only be indicated that
such a system would also lead very soon to justified prices, so that the
provision would deal with the situation by its pure existence and that
probably the tax would only have to be levied in exceptional circumstances.

The description of such a system would not be complete if no attention
were drawn to its dangers, namely that it might result in an extensive use
of restrictive business practices; a danger inherent to a certain degree
also to anti-dumping measures.

The opening of a controlled trade between monopoly and free-trade countries
would provide for the first time a regulated trade between these two incom­
parable types of economies. This situation would open a wide field for new
action by the GATT. Such action would be - in addition to the preparation
of the above-mentioned provisions - inter alia, a comparison of the value of
products in monopoly countries with the value of similar products in other
countries. Such a study might - for the first time - make official figures
available, which would be the necessary basis for the CONTRACTING PARTIES
in their consultations concerning this problem.