SPECIAL PROBLEMS OF DEVELOPING COUNTRIES

Communication from India

The following communication, dated 17 September 1971, has been received from the Permanent Mission of India.

I have the honour to refer to the Decision taken by the GATT Council at its meeting on 29 September 1970, inviting developing countries to submit in writing explanations of the specific problems faced by them in adhering to the Anti-Dumping Code and to enclose a note giving specific proposals, acceptance to which would enable India to adhere to the Code.

PROBLEMS FACED BY DEVELOPING COUNTRIES IN ACCORDING TO THE ANTI-DUMPING CODE

Specific Problems

At the time the Code was being discussed in the Kennedy Round of Trade Negotiations, India together with other developing countries reserved its position because of the failure to reach agreement on the inclusion of special provisions in the Code to meet some of the specific problems of the developing countries. These problems related to:

(i) the lack of an undertaking by developed countries that they would take into account Part IV when applying the Code to imports from developing countries;

(ii) the definition of normal value as the home market price in the exporting country (Article 2(a) of the Code);

(iii) the lack of recognition that a particular market situation (Article 2(d)) often existed in developing countries.

1See document C/M/64, page 11.
2. Article 2 of the Anti-Dumping Code states that a product is to be considered as being dumped, if it is introduced into commerce of another country at less than its "normal value". For this purpose, the "normal value" has been defined as comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country. This definition of normal value poses special problem to the trade of developing countries, as in the case of a large number of products exported by these countries, the prevailing domestic prices have no direct relationship with the prices at which the goods could be sold by them in the international markets. This situation arises mainly because of the following factors:

(i) To raise revenue for financing their developmental programmes these countries are required to impose high customs duties and fiscal charges both on imports of raw materials used in the manufacture as well as on finished products. In the case of a Federal State like India, these fiscal charges are not only levied by the Central Government but also by the State Governments as well as by municipal and local authorities. Under paragraph 3 of Article VII, such taxes are refundable on exported products but because of the multiple points at which these taxes are levied as well as the fact that these are imposed by different authorities, it is not administratively feasible to evolve procedures for correcting the situation through drawback or refund.

(ii) In the case of India, and this would apply to other developing countries, because of the structural imbalances, transport bottle-necks, and restrictions imposed on imports for balance-of-payments reasons, 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 the international market however, efforts are made to insulate the export production from the stresses and strains to which the domestic economy is subject, through adoption of expert development schemes which enable exporters to get adequate supplies of imported essential raw materials and intermediate products at international prices as well as by giving priority to the requirements of export industries in the allocation of scarce domestic resources. As a result of such measures it has been possible to sell in the world market at prices which are comparable to the prices for similar products in the international markets, though in some cases they may be lower than the prices at which goods are sold in the domestic market. The prices for goods exported are however in all cases higher than the actual cost of production of the exported goods plus reasonable margin of profit.

Possible solution

It may be possible for the developing countries to withdraw the reservations which they have made and accept the Code if understanding in the following lines are incorporated in the Code:

(1) It should be recognized that in accordance with provisions Article 2(d) of the Code, particular market situation which do not permit proper price comparison with domestic prices in the exporting country always exists in the case of developing countries by adopting the following interpretative note:
"Such a particular market situation exists in the countries, the economies of which can only support low standards of living and which are in the early stages of development, as the sales in the domestic markets of such exporting countries do not permit a proper comparison for the purposes of this Article."

(2) In cases where questions arise as to the "normal value" of the goods exported by developing countries, such normal value should be determined on the basis of comparison of (a) invoice prices for like products for export to the major export market or (b) invoice prices generally obtained for like products for exports to other third country markets; and in no case should the home market price or a price constructed from cost of production be taken into account in determining the existence of dumping.