GENERAL AGREEMENT ON TARIFFS AND TRADE

Sub-Committee on Non-Tariff Barriers
Group on Anti-Dumping Policies

ANTI-DUMPING CHECKLIST

Addendum

Comments by the European Economic Community

Subject: GATT multilateral trade negotiations
- Non-tariff barriers
- Anti-dumping measures

The European Economic Community attaches great importance to the negotiations on non-tariff barriers, particularly in the field of anti-dumping regulations. It considers that, although Article VI of the General Agreement gives each contracting party the right to defend itself against dumping, the use of this legitimate right must not lead to any misuse of anti-dumping measures that might impair or even nullify the value of the tariff reductions that may be granted by its trading partners.

At the present time, the anti-dumping policies of certain contracting parties are, from many aspects, a cause of concern for EEC exports which frequently encounter barriers that may discourage exporters, because of the uncertainty which such policies arouse in regard to the costs and even the final result of transactions.

In this context one may cite, inter alia, the following:

- procedures are lengthy, due mainly to the fact that in certain countries the investigation does not cover, simultaneously and forthwith, all the factors to be taken into consideration either for the introduction of anti-dumping measures or for completion of the procedure;

- throughout nearly the whole duration of the procedure, conservative measures are applied that are established on the basis of assumptions which, in the light of the results of the investigation, most often prove to be unfounded; in addition, such measures sometimes take a form that leaves the parties concerned in uncertainty as to the scope of the sanctions to which they might be exposed;
duties are made retroactive in conditions that are detrimental to parties acting in good faith.

The EEC expects contracting parties applying such policies to adjust them in such a manner as to permit attainment of the objectives set forth in the GATT Ministerial Resolution of 21 May 1963 concerning the comprehensive trade negotiations. Furthermore, it aims at achieving true equilibrium between the various import and export interests concerned.

In recent months some consideration has been given to the possible formulation of an international code of conduct in regard to anti-dumping duties. The EEC is not opposed to discussing this. It believes that such a code might be useful in the perspective of tariff concessions that the contracting parties envisage granting to each other at the conclusion of the current negotiations.

Such a discussion can be of interest, however, only if there is agreement on the following principles:

- the code would be formulated in the context of the current comprehensive trade negotiations;

- the objective of the code would be to standardize and clarify the use of anti-dumping duties, taking into account the interests of the economies of the contracting parties and at the same time the objective of the harmonious development of international trade, which implies the elimination of unjustified trade barriers deriving from the procedures and practices applied by certain countries in this regard;

- the code would have to be of a mandatory character, with a view to the effective harmonization of national legislation and regulations on this subject.

In this order of ideas, the EEC considers that the code should confirm the principles set forth in the General Agreement, more particularly in Article VI thereof. Indeed, those principles are accepted by all the contracting parties, which all seem to consider that their legislation is in conformity with them.

Starting from this idea, the EEC does not share the desire expressed by certain countries to discuss these principles again in the light of what they believe to be the needs of international trade at the present time. The Community wonders whether it would be feasible and legally possible to amend Article VI of the General Agreement in the current negotiations. Any reconsideration of the principles of
Article VI of the General Agreement would give rise to lengthy discussions because each country would be tempted to secure its own interests. Furthermore, the EEC draws the attention of the countries participating in the negotiations to the terms of reference given to the Trade Negotiations Committee by the Ministerial Resolution of 21 May 1963 which, as regards non-tariff barriers, are limited to a review of the application of the GATT rules in this respect.

The Community considers, therefore, that the provisions of the code should above all clarify Article VI of the General Agreement with a view to ensuring that it is applied satisfactorily by all the contracting parties. It considers that for the formulation of these rules, the Group should take as a working basis the report of the GATT Group of Experts on anti-dumping and countervailing duties, which was published in March 1961 and approved by the CONTRACTING PARTIES to the General Agreement. The interpretation given in that report to the principles of the General Agreement appears entirely valid to the Community. The EEC regrets that this interpretation, arrived at jointly by the contracting parties, should not always have been followed by all States, for this would to a great extent have prevented the difficulties now being encountered in this field.

On the basis of the principles set forth above, the EEC states its position in regard to the anti-dumping checklist drawn up by the GATT secretariat.

As regards points VI to VIII of the checklist in particular, this statement of position is annexed hereto.
VI. Anti-dumping duties

A. Obligatory or permissive imposition

The EEC abides by the provisions of Article VI of the General Agreement, which are unequivocal in this regard. Each contracting party has the right to defend itself against punishable dumping, that is to say dumping harmful to one of its producing industries; recourse to this right is not obligatory, however, but is left to the discretion of the competent authorities of the country.

Indeed, the General Agreement cannot oblige the contracting parties to defend their own interests. It must obviously leave it to the parties themselves to take defensive action or not, as they deem appropriate.

The EEC would wish the GATT rules to be confirmed in this sense and for it to be expressly specified that the introduction of an anti-dumping duty is never obligatory.

The Community considers that the discretionary power conferred on the competent authorities can be exercised only at a high administrative level. Indeed, this view is in conformity with the opinion expressed in the report of the GATT Group of Experts on anti-dumping and countervailing duties, published in Geneva in March 1961.

B. Applicability

The EEC affirms the principle that, when there is dumping of different products, the investigation and the determination of duties should be on a product-by-product basis. The same method should be followed, to the fullest extent possible, when dumping of a single product is from several sources.

C. Amount of duty

Article VI:2 of the General Agreement limits the amount of an anti-dumping duty to the margin of dumping in respect of the product concerned, while not obliging contracting parties to levy in all cases a duty corresponding to the entire amount of that margin. Such compensation of the entire margin of dumping is in fact not always necessary or desirable in order to achieve the principal objective of anti-dumping measures, that is to say to counteract material injury.

The EEC believes that it would be of the utmost interest for all contracting parties to conform to this principle.
D. Retroactive application of duties

The EEC considers, in conformity with the report of the GATT Group of Experts, that anti-dumping duties should not have any retroactive effect. However, in cases where provisional measures (in the form of a levy or security) have been applied, the competent authorities are permitted to collect the sums corresponding to the amount of the anti-dumping duties fixed definitively.

The EEC believes it to be of essential importance that the current negotiations should lead to a formal prohibition of any retroactive imposition of anti-dumping duties, except in cases where provisional duties have been applied.

E. Duration

On this point, the position of the EEC derives from that expressed in regard to the amount of the duties: an anti-dumping duty should remain in force only so long as it is genuinely necessary to counteract dumping which is causing or threatening material injury. The attitude of the Community corresponds in fact to that of the GATT Group of Experts, as set forth in its report dated March 1961.

On this basis, the Community can agree with the other opinions of the Group of Experts recommending that the imposition of any anti-dumping duty should be reviewed from time to time. The parties concerned or the competent authorities of the exporting country should have the possibility of requesting such a review if they furnish sufficient evidence to justify a different assessment of the situation or if they show in a convincing manner that in the event that the duties were revoked the export products concerned would no longer be dumped.

VII. Provisional duties

The EEC considers that the nature of provisional measures should enable importers to determine at any moment what financial costs they would have to meet. It therefore asks that the forms of application of such measures should be limited to the institution of provisional duties based on a first estimate of the margin of dumping. Of course, contracting parties would be at liberty to settle the methods of applying such provisional duties (a levy or a security). If the definitive duties were lower than the duties charged on a provisional basis, importers would be reimbursed to an appropriate extent, by decision of the competent authorities. In the contrary case, no additional levy must be charged.

The EEC considers that provisional duties can be instituted only on condition that a prima facie case has been made out on punishable dumping requiring immediate defensive action. The application of such duties must be limited to a certain period.
In addition the EEC hopes, in conformity with the report of the experts, that such duties would be used sparingly and eliminated as soon as they are no longer necessary, in order to interfere as little as possible with normal trade and in order that they should not lead to undue protection.

VIII. Investigation procedures and procedural fairness

A. Initiation of investigations and consequences thereof

The EEC considers that an investigation in regard to dumping should, in general, be initiated only on request of the producers to whom injury is caused or threatened. Certain minimum criteria should be required for such a request to be taken into consideration. Thus, any party so requesting should be required to furnish all the elements in his possession that might enable the competent authorities to verify the existence of dumping practices and material injury.

As regards the consequences of the initiation of an investigation, the EEC considers that any administrative action that might prove harmful for the importers or exporters concerned should be subject to certain minimum conditions (see in particular points VII and VIII A.1). In addition it holds the view that the initiation of an investigation should have only the following consequences:

- publicity of the initiation of the procedure
- examination of the facts and search for information
- institution of duties.

1. Publicity of investigation

Some publicity of procedures might speed up and assist the investigation. This might be done by official publication of a brief notice informing the parties concerned that the investigation is being initiated and inviting interested parties to communicate to the competent authorities all information available to them.

In order to avoid any uncertainty which such publicity might cause for subsequent imports, it should, however, be subject to a strict condition - that the elements collected so far have shown that, as a result of dumping practices, defensive measures might prove necessary.

2. Confidential treatment of information

In the opinion of the Community, an effective and fair examination of the facts implies that all interested parties must have sufficient assurances that their interests are not jeopardized by the transmission of confidential information to the competent authorities. Accordingly, the EEC proposes that any
Disclosure of information obtained during an investigation should be formally prohibited if such information were to be considered as confidential, following a properly substantiated request from the interested parties.

It goes without saying that such a provision should not prevent either the disclosure of general information, in particular by publication of a notice of the kind referred to above (see point VIII A i), or the motivation of decisions to institute anti-dumping duties, on condition, however, that in such cases account is taken of the legitimate interest of the parties concerned that their business secrets should not be disclosed.

B. Finding of dumping and material injury

In this regard, the EEC requests first and foremost that the investigation procedures should abide by the principle set forth in Article VI of the General Agreement that the institution of an anti-dumping duty is an exceptional measure, justified only when the two factors - dumping on the one hand and material injury on the other - exist. For this reason, any investigation must from the outset apply in a parallel manner to these two factors.

Indeed, only such a simultaneous procedure, as applied in the EEC, ensures that the facts are examined speedily and that the investigation by the competent authorities is not prolonged for the sole reason that the two factors are subject to successive procedures, one depending on the results of the other. In addition, it ensures that the investigation can be terminated rapidly if at any stage of the investigation into the other points to be considered there is sufficient evidence that one of these factors is not present.

Opportunities given exporters: written statements, public hearings

In this regard the Community shares the view of the GATT Group of Experts. It considers that no anti-dumping duty should be definitively instituted unless the interested parties have been afforded an opportunity to be heard by the competent authorities.

In the event that the interested parties have so requested in writing within a certain time-limit, fixed for instance in the notice announcing the investigation procedure, such requests should be granted if the interested parties show that they might be directly concerned by the result of the examination of the facts.