GENERAL AGREEMENT ON TARIFFS AND TRADE

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

ANTI-DUMPING CHECKLIST

Addendum

Comments by Japan on Items I-V, IX-XI and XIII

At the meeting of the Group on Anti-Dumping Policies on 10-11 May 1966, member governments were invited to submit their comments on items I-V and IX-XIII of the checklist. The following are the Japanese comments. They are made without prejudice to the final position to be taken by the Japanese Government.

I. Concept of dumping

A. Price discrimination

1. The price discrimination should be taken to mean the difference between the export price and the price of the like product in the domestic market of the supplier. To ensure that the two prices are genuinely comparable, due allowance should be made in each case for difference in conditions and terms of sale and other differences affecting price comparability. Provision 9 of the United Kingdom Draft Code provides a useful guideline for relevant elements to be considered in making such adjustment.

2. When there are no comparable domestic prices, e.g., when there are no open sales in the domestic market, price discrimination should be determined by comparison with either of the alternatives provided for in Article VI:1(b)(i) and (ii) of the GATT.

B. Hidden dumping by associated houses

For hidden dumping of goods for resale by associated houses, the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer. (See note 1 on paragraph 1 of Article VI of GATT.)
II. Limitation criteria

A. Percentage limits

Where the margin of dumping is small, though such dumping remains actionable, it is desirable to ignore the margin and to refrain from taking anti-dumping measures in the actual administration of the national anti-dumping legislations. It seems, however, impracticable to attempt to agree, in the international code, on the percentage of margin, below which the price discrimination is to be ignored.

B. Alignment of export prices

This question is closely related to the question of material injury. Should alignment of export prices involving price discriminations cause the material injury to the domestic industry, alignment of export prices as such does not constitute a justifiable reason for not permitting anti-dumping actions.

III. Concept of material injury

A. Possible elements to be considered

In assessing the material injury to the domestic industry, a particular emphasis should be put on whether there has been a substantial reduction in the turnovers, profits and the market share of the industry concerned. Additional factors, such as capacity utilization, reduction of employment, etc., should also be taken into account. All these elements should be considered as a whole, and there should also be a clear relation between the dumped imports and the injury.

B. Threat of injury

A finding of threat of material injury should be based on evidence and not merely on allegation, conjecture or remote possibilities. The threat must be clearly foreseen, substantive and imminent. The illustrated case of the threat of material injury in Provision 14 of the United Kingdom Draft Code as such does not seem to justify a finding of threat of material injury. A finding of threat of material injury should be permitted only when the threat has become more tangible and real, for example, in the case where export contracts have been concluded involving substantially increased quantities of the goods at dumped prices.