

23 October 1958

ANTI-DUMPING AND COUNTERVAILING DUTIESMemorandum received from the Government of Czechoslovakia

1. Czechoslovakia has always considered the Article on anti-dumping and countervailing duties as one of the most important provisions of the General Agreement on Tariffs and Trade.
2. Czechoslovakia supported the primary purpose of this provision i.e. to safeguard the agreed tariff concessions against impairment and nullification by means of anti-dumping measures if such were taken by importing countries without any agreed rules and limitations.
3. Czechoslovakia agreed also with the second aim of the article on anti-dumping duties, i.e. the condemnation of dumping as a practice which is economically undesirable and prejudicial to international trade. In our view, dumping, i.e. export of products to prices lower than the normal value of such products, is prejudicial first of all to the exporting country, whose national economy is suffering a loss from such a practice.
4. However, both aims mentioned above require precise definition of what is to be considered as dumping, and especially what is to be considered as "normal value" of goods. We recognize that this may not be an easy task in view of the differences in existing customs legislation and of the need for a certain flexibility of this provision which cannot go into all details of the matter. We have felt, however, from the beginning that the wording of Article VI was not entirely satisfactory in this respect, and we believe that this conclusion was confirmed by the experience of several other contracting parties as expressed in the discussions so far.
5. Already in Havana in 1948 the Czechoslovak delegation tried to obtain an amendment of the paragraph requiring a comparison of the export price with the "highest comparable price for the like product to any third country". The Czechoslovak delegation drew attention to the fact that this provision was in contradiction with Article XVII on State trading. Under this Article State-trading enterprises are obliged to make purchases or sales solely in accordance with commercial consideration, which implies without any doubt also a requirement to buy at lowest prices and to sell at highest obtainable prices. If, however, such a State-trading enterprise succeeds in selling its goods to a country for a higher price (which it is required to do under Article XVII) all its prices to other countries, hitherto regarded as fair prices by this mere fact automatically could be considered as dumping prices, if the provisions of Article VI were taken verbally.

6. In spite of suggestions made during the Review Session 1954-55 of the CONTRACTING PARTIES the relation of the Article on anti-dumping duties to the most-favoured-nation clause has not been defined. There is no doubt that the imposition of anti-dumping duties has the effect that in an individual case higher duties may be levied than those which the respective importing country is normally entitled to levy under a conventional rate or a most-favoured-nation rate. In this respect Article VI can be regarded as a kind of exception from Article III (revised) of GATT, as well as to a certain extent from the most-favoured-nation clause, although it is not expressly mentioned as such. This exception, however, cannot be interpreted in a formalistic way, which seems to appear in some paragraphs of the report of the Panel on Swedish Anti-dumping Duties in document L/328 of 23 February 1955. In paragraph 8 of this report it is said that the low-cost producer resorting to dumping practices, foregoes the protection embodied in the most-favoured-nation clause. We feel that this is true only to some extent. It is further suggested in the said report that Article VI does not oblige an importing country to levy an anti-dumping duty whenever there is a case of dumping, or to treat in the same manner all suppliers who resort to such practices. Such an interpretation seems to go too far, as it invites practically importing countries to resort to unacceptable discrimination and arbitrary action, in contradiction with all main principles of GATT. After all, GATT does not oblige any country to levy even ordinary customs duties. But if duties are levied, then they should apply in the same way to all similar cases. This is in our view the material and not only formal meaning of the most-favoured-nation principle which stands unaffected even in the case of anti-dumping duties. In consequence, even in the case of imposing anti-dumping duties, discrimination cannot be permitted, if there are similar cases of dumping.

7. In commercial relations between countries with different economic systems account should be taken of the different functions of individual economic notions in these two systems. One of these differences brings about the incomparability of export and internal prices the last mentioned being subject to different economic laws in the two different systems. The fact that an export price of a product of a country which has a monopoly of foreign trade and where all domestic prices are fixed by the State is lower than the price of a similar product when sold on the internal market, does not mean that there is a case of dumping. The provision in Article VI, paragraph 1, provides for due allowance to be made for differences affecting price comparability. This provision, however, needs to be further elaborated to meet the above-mentioned case.

8. At the Review Session of the CONTRACTING PARTIES an interpretative note to Article VI was accepted recognizing that a comparison of export and domestic prices may not always be appropriate 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. This is, however, only a negative provision which leaves the door open to a direct and positive

settlement of this question through bilateral consultations or arrangements. Czechoslovakia has already come to such a settlement with the customs administrations of some other contracting parties.

9. Czechoslovakia is interested in exporting at the highest prices possible and at the most advantageous conditions, as well as in preventing sales at prices lower than the normal value of the goods which in reality would be detrimental to the exporting country itself. Thus there is a suitable basis for a satisfactory solution by mutual consultations of all cases where the importing country is of the opinion that the export prices in question are too low. We are convinced that through previous consultations all such cases can effectively be prevented.

10. In no case can we accept that anti-dumping and similar measures be applied against imports from trade-monopoly countries as a general measure, e.g., in the form of a general increase of the invoice value of all imported goods, etc.

11. The deterioration of the economic situation in some countries resulting from economic difficulties may bring about a strengthening of competition in the field of international trade and of various protectionist interests. Consequently we consider it advisable to pay more attention to the question of anti-dumping duties and their correct and non-discriminatory application. We suggest therefore that the CONTRACTING PARTIES pursue their study of this matter and deal in particular with the urgent questions mentioned in the preceding paragraphs.