

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
ADP/Spec/3
SCM/Spec/4
27 April 1981

Special Distribution

Group of Experts on the Definition of the Word "Related"

DRAFT REPORT TO THE COMMITTEE ON ANTI-DUMPING PRACTICES AND TO THE COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

1. The Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures established, at their May 1980 meetings, a Joint Group of Experts with the following terms of reference:

"to identify and examine, at a technical level, problems involved in the definition of the word "related" as required by footnote 7 to Article 4 of the Agreement on Implementation of Article VI of the GATT and footnote 21 to Article 6 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT and to report to both the Committees (SCM/M/3, paragraph 42).

2. The Group met on 24 October 1980, 4 February 1981 and 27 April 1981. It elected Mr. M. Lemmel (Sweden) as its chairman.

3. Interested Signatories and Parties which had not nominated their experts, and interested observers wishing to make their contributions on the matter, were invited to submit them to the Chairman (ADP/Spec/2-SCM/Spec/3).

4. The Group based its discussion on contributions from individual experts and on the definition of the word "related", contained in Article 15 of the Agreement on Implementation of Article VII of the GATT (Valuation Code). It was recognized that the matter of defining the word "related" should be seen as limited to the purposes of interpretation of the term "domestic industry" in anti-dumping or countervailing proceedings.

5. The experts were of the opinion that the best approach would be to combine certain relevant criteria from the definition in the Valuation Code with the requirement that the effect of the relationship was such as to cause the producer concerned to behave differently from non-related producers. At the same time they recognized that, as certain criteria were extremely difficult to evaluate, any such definition should allow sufficient flexibility and should be applied with appropriate care.

6. Taking into account all the views expressed, the Group agreed to propose the following text for consideration and possible adoption by the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures respectively:

"For the purpose of Article 4:1(i) of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and of Article 6:5 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on

Tariffs and Trade, producers shall be deemed to be related to the exporters or importers only if:

- (a) one of them directly or indirectly controls* the other; or
 - (b) both of them are directly or indirectly controlled* by a third person; or
 - (c) together they directly or indirectly control* a third person;
- provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

*For the purposes of these Articles, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.