ARTICLE VI

ANTI-DUMPING AND COUNTERVAILING DUTIES

I. TEXT OF ARTICLE VI AND INTERPRETATIVE NOTE AD ARTICLE VI

Article VI

Anti-dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal valu

(*b*) The CONTRACTING PARTIES may waive the requirement of sub-paragraph (*a*) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of sub-paragraph (*a*) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.*

(*c*) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (*b*) of this paragraph without the prior approval of the CONTRACTING PARTIES; *Provided* that such action shall be reported immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES

(2) Measures under Article VI

See the material below at page 237 on "Use of measures against dumping or subsidization other than anti-dumping or countervailing duties on imports".

3. Paragraph 1

(1) "dumping ... is to be condemned if it causes or threatens material injury ..."

The first sentence of Article VI:1 was drafted at the Havana Conference "as a preamble to Article [VI] ... which would, in effect, constitute a general condemnation of the practice of dumping".[5] In discussions at the Review Session in 1954-55, in connection with the rejection of a proposal to add a clause specifically obligating contracting parties to prevent dumping by their commerci

(a) *"hidden dumping by associated houses"*

See Interpretative Note to paragraph 1. See also Articles 2(e) and 2.5 of the Agreements on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1967 and 1979 respectively[9] which provide: "In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine".[10]

(b) Indirect dumping

The Report of the Review Working Party on "Other Barriers to Trade" provides as follows:

> "The Working Party also agreed that in the case where goods are not imported directly from the country of origin but are consigned to the country of importation from an intermediate territory, it would be in accordance with the terms of Article VI to determine the margin of dumping by comparing the price at which the goods are sold from the country of consignment to the country of importation with the comparable price (as defined in paragraph 1 of Article VI) in either the country of consignment or the country of origin of the goods. It is of course understood that where goods are merely transhipped through a third country without entering into the commerce of that country, it would not be permissible to apply anti-dumping duties by reference to prices of like goods in the country".[11]

The Report of the Group of Experts on "Anti-Dumping and Countervailing Duties" notes that:

> "In their examination of the problem of the determination of the normal value or the domestic market price in the exporting country the Group then considered the question of dumping of goods where the exporting country is not the producing country of the goods concerned... The Group noted that since the wording of Article VI, paragraph 1(a), referred only to the comparable price in the exporting country, there was some doubt whether action against indirect dumping was strictly in accordance with the letter of the Agreement. However, despite this doubt, the Group were generally of the opinion that it was reasonable for countries to have the right to protect themselves against indirect dumping (whether of processed or unprocessed goods), particularly in view of the provision of Article VI which permits the imposition of countervailing duties to offset the effects of subsidies whether these are granted in the producing country or the exporting country, and in this connection the Group noted the conclusions recorded in paragraph 5 of the report of the Review Working Party on Other Barriers to Trade (BISD, Third Supplement, page 223)".[12]

See also Articles 2(c) and 2:3 of the Agreement on Implementation of Article VI of the General Agreement of 1967 and 1979 respectively[13], which provide: "In the case where products are not imported directly from the country of origin but are exported to10

Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation".[14]

(3) "normal value"

(a) Criteria for determining normal value

Paragraph 1 of Article VI sets out three ways to determine the normal value of the exported goods. The Panel Report on "Swedish Anti-Dumping Duties" notes in this respect:

> "The Panel was of the opinion that if the Swedish authorities considered that it was not possible to find 'a comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country', no provision in the General Agreement would prevent them from using one of the other two criteria laid down in Article VI".[15]

The Report of the Group of Experts on "Anti-Dumping and Countervailing Duties" contains a discussion of the order in which the criteria of paragraph 1 of Article VI should be used:

> "The Group had some discussion on whether the criteria in paragraph 1(b)(i) and paragraph 1(b)(ii) of Article VI were alternative and equal criteria to be used at the discretion of the importing country, or whether paragraph 1(b)(ii) could only be used in cases where it had not been possible to determine a normal market value under paragraph 1(a) or paragraph 1(b)(i) of Article VI. The Group was of the opinion that paragraph 1(b)(i) and paragraph 1(b)(ii) laid down alternative and equal criteria to be used at the discretion of the importing country but only after it had failed to establish a normal market value under paragraph 1(a) of Article VI ... The Group thought that no order of priority for these two criteria could be imposed but, though it might often be easier to collect the necessary information for the use of the criterion under paragraph 1(b)(i), the use of the criterion under paragraph 1(b)(ii) was sometimes preferable in that, since it was normal and reasonable for different prices to be charged in different markets, the use of the criterion under paragraph 1(b)(i) could often produce misleading results. The Group agreed that the criteria under paragraph 1(b) of Article VI could only be used where no domestic price existed as defined in paragraph 1(a) or in cases where there were sales to the home market but where it was not possible to determine normal value from these sales, for example because they did not fall within 'the ordinary course of trade' as required in paragraph 1(a)".[16]

See also Articles 2(d) and 2.4 of the 1967 and 1979 Agreements on Implementation of Article VI respectively: "When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for

nevertheless thought that this slight discrepancy between the two texts would have no practical effect if the term 'like product' were interpreted as suggested by the Group".[24]

Articles 2(b) and 2:2 of the 1967 and 1979 Agreements on Implementation of Article VI of the General Agreement respectively, as well as a footnote to Article 6:1 of the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement, contain the following definition:

"Throughout this Code [Agreement] the term 'like product' ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration".[25]

See also the material on "domestic industry" below at page 245.

(e) Note 2 Ad Paragraph 1: "imports from a country which has a complete or substant.8y6 61(semya compl)4(e)3((e onopopl)4(y)]TJ

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(f) Special problems of developing countries

the exported goods in the country of origin plus a reasonable amount for administrative, selling and other costs".[34]

(4) Comparisons between normal value and export price

The Report of the Group of Experts on "Anti-Dumping and Countervailing Duties" discusses adjustments for differences affecting price comparability:

"The Group first considered the problem of the determination of the normal value or the domestic market price in the exporting or producing country in the light of the definition in paragraph 1(a) of Article VI [price-to-price comparisons]. ... some membersni affectin

of another country at an export price which was less than the comparable price in the country of exportation. In the case of the bids, both of these conditions were fulfilled. He added that the effective implementation of Article VI and the [Agreement] would be frustrated if importing authorities were unable to deal with such contractual arrangements at time of tender".[39]

4. Paragraph 2

(1) "a contracting party may levy on any dumped product an anti-dumping duty"

The 1955 Panel Report on "Swedish Anti-Dumping Duties" examined a Swedish Decree imposing a basic price scheme under which an anti-dumping duty was levied on imports of nylon stockings whenever the invoice price was lower than a minimum price fixed by the Swedish Government. The Panel noted:

"... Article VI does not oblige an impil4(rt)346(o)-5.6(mp)-5.6(try a5.6(th).8(h)l4(rte)37.1(v)3a5.6(th anti5.6(trydu

high administrative level and that all such decisions should be published in an official form. It was also suggested that the reasons for the decision should be made public …".[44] See also the discussion in the Second Report of the Group of Experts on Anti-Dumping and Countervailing Duties[45] of investigations in exporting countries, governmental or administrative hearings in importing countries, and contacts between governments concerned prior to the imposition of anti-dumping or countervailing duties.

See also Articles 8 ("Imposition and Collection of Anti-Dumping Duties") and 9 ("Duration of Anti-Dumping Duties") of the 1967 and 1979 Agreements on Implementation of Article VI of the General Agreement and Article 4 ("Imposition of Countervailing Duties") of the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement.[46]

(2) Basic price systems

The Panel Report on "Swedish Anti-dumping Duties" examined two variations on a "basic price" system for anti-dumping proceedings. At first, "an anti-dumping duty was levied whenever the invoice price was lower than the relevant minimum price fixed by the Swedish Government, the importer being entitled to obtain a refund of that duty if the case of dumping was not established. [In a later system] basic prices … were retained as an administrative device enabling the Swedish Customs Authorities to exempt from anti-dumping enquiries any consignment the price of which was higher that the basic price: the actual determination of dumping policies and the levying of the anti-dumping duty were related to the concept of normal value … The anti-dumping duty is assessed in relation to the basic price only when that price is lower than the normal value of the imported product". The Panel found as follows:

> "The Panel recognized … that the basic price system would have a serious discriminatory effect if consignments of the goods exported by the low-cost producers had been delayed and subjected to uncertainties by the application of that system and the case for dumping were not established in the course of the enquiry. …
>
> "As regards the second argument relating to the fact that the basic price system is unrelated to the actual prices on the domestic markets of the various exporting countries, the Panel was of the opinion that this feature of the scheme would not necessarily be inconsistent with the provisions of Article VI so long as the basic price is equal to or lower than the actual price on the market of the lowest cost producer. If that condition is fulfilled, no anti-dumping duty will be levied contrary to the provisions of Article VI".[47]

The Second Report on "Anti-Dumping and Countervailing Duties" discusses "pre-selection systems" (in which an anti-dumping investigation is conducted with respect to imports below a particular price, and anti-dumping duties are applied only after a specific complaint has been investigated and a finding of dumping and material injury made); and "basic price systems".

> "The Group recognized that, where basic price systems were operated so as to limit anti-dumping action in a particular case to the margin of dumping judged to be materially injurious, these systems were fully

(b) domestic importers or foreign exporters had in all cases the opportunity to demonstrate that their products, although they were sold below the basic price, were not sold at a dumping price; and

(c) the governments using this system periodically revised the basic price on the basis of the fluctuations of the lowest normal price in any of the supplying countries".[48]

Article 8(d) of the 1967 Agreement and paragraph 8:4 of the 1979 Agreement on Implementation of Article VI of the General Agreement set out rules for the application of a "basic price system". In October 1981, the Committee on Anti-Dumping Practices adopted an Understanding on Article 8:4 of the Agreement providing, *inter alia*, that

> "The Committee agreed that basic price systems as provided for in Article 8:4 were intended exclusively as a device to facilitate the calculation and collection of anti-dumping duties following a full investigation for each country and product concerned, and for supplies concerned, resulting in a finding of injurious dumping. However, the Committee recognized that the wording of Article 8:4 contained ambiguities and, in the light of different possible interpretations, concluded that Article 8:4 is not essential to the effective operation of the Agreement and shall not provide the basis for any anti-dumping investigation or for imposition and collection of anti-dumping duties.
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> "At the same time, the Committee discussed special monitoring schemes, in so far as they are related to anti-dumping systems. The Committee recognizes that such schemes are not envisioned by Article VI of the GATT or the Agreement and it is of the view that they give cause for concern in that they could be used in a manner contrary to the spirit of the Agreement. The Committee agreed that such schemes shall not be used as a substitute for initiating and carrying out anti-dumping investigations in full conformity with all provisions of the Agreement ...".[49]

(3) Initiation of investigations

The Second Report of the Group of Experts on Anti-Dumping and Countervailing Duties provides that: "The Group agreed that, since the criterion of material injury was one of the two factors required to allow anti-dumping action, the initiative for such action should normally come from domestic producers who considered themselves injured or threatened with injury by dumping. Governments would, however, have the right to take such initiative when the conditions set forth in Article VI existed".[50]

The Report of the Panel, under the Agreement on Implementation of Article VI, on United States - Anti-dumping Duties on Gray Portland Cement and Cement Clinker from Mexico", which has not been adopted, examined the initiation of the anti-dumping investigation which had led to the measures in question. The investigation had been initiated on the basis of a petition which alleged that domestic industries in two regions of the Unigdfuxop1p1in twe Committeeoos e Committeer

"The Panel ... noted that the term 'on behalf of' involved a notion of agency or representation and that Article 4 provided the definition of the term 'industry' in Article 5:1, on behalf of which the petition had to be made. In the case of a national market, one of the two definitions of industry according to Article 4:1 was domestic producers whose collective output of the like products constituted a major proportion of the total domestic production of those products. Thus, in a national market, evidence of 'support by a major proportion' would meet the requirement under Article 5:1 because there would be evidence of support for the petition by the industry concerned. However, the Panel considered that in view of the fact that Article 5:1 required that an industry in a regional market be defined as 'producers of all or almost all of the production within such market', support for a petition by producers accounting for a major proportion of the production in that market would not be adequate to satisfy the requirement that a petition had to have the authorization or approval of the producers of all or almost all of the production in the regional market. ...

"Accordingly, the Panel concluded that the producers in a regional market in respect of whom injury had to be found, namely 'the producers of all or almost all of the production within such market', were the producers by or on behalf of which the request for initiating an anti-dumping investigation in a regional market had to be made under Article 5:1.[53]

"... the Panel concluded that the United States' initiation of the anti-dumping investigation on gray portland cement and cement clinker imported from Mexico was inconsistent with Article 5:1 because the United States' authorities did not satisfy themselves prior to initiation that the petition was on behalf of producers of all or almost all of the production in the regional market. ..."[54]

The 1993 Panel Report on "United States - Measures Affecting the Imports of Softwood Lumber from Canada" examined the consistency with the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of a decision to self-initiate a countervailing duty investigation:

"The Panel noted that the self-initiation of a countervailing duty investigation was subject to the provisions of Article 2:1 of the Agreement. This Article provided in relevant part:

'An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry affected. The request shall include *sufficient evidence* of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Agreement[6] and (c) a causal link between the subsidized imports and the alleged injury. If in *special circumstances* the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have *sufficient evidence* on all points under (a) to (c) above'. (emphasis added)

"Whereas the Agreement called for 'sufficient evidence' and identified the subject matter on which such

consequences of a countervailing duty investigation initiated on an unmeritorious basis. With regard to the second of these, the Panel considered that in applying the appropriate standard to a review of the decision of a national authority to initiate a countervailing duty investigation, it should in particular be sensitive to the intended anti-harassment function of Article 2:1.

"In analysing further what was meant by the term 'sufficient evidence', the Panel noted that the quantum and quality of evidence to be required of an investigating authority prior to initiation of an investigation would necessarily have to be less than that required of that authority at the time of making a final determination. At the same time, it appeared to the Panel that 'sufficient evidence' clearly had to mean

"The Panel noted the argument of Canada that Article 2:1 required a higher standard of sufficient evidence

Havana notes: "The Subcommittee [on Article 34 of the Charter] agreed to the deletion of paragraph 6 of the Geneva Draft which expressly prohibited the use of measures other than anti-dumping or countervailing duties against dumping or subsidization. It did so with the definite understanding that measures other than compensatory anti-dumping or countervailing duties may not be applied to counteract dumping or subsidization except insofar as such other measures are permitted under other provisions of the Charter".[66] After the close of the Havana Conference, the Working Party in the Second Session on "Modifications to the General Agreement" agreed to take the Havana Charter article into the General Agreement, entirely replacing the original Article VI. The Report of this Working Party notes:

> "The working party, endorsing the views expressed by [the Subcommittee on Article 34 at the Havana Conference] agreed that measures other than compensatory

5. Paragraph 3

whether these are granted in the producing country or the exporting country".[73] The Second Report in 1960 of the same Group notes as well:

> "Paragraph 3 of Article VI stipulated that no countervailing duty could be collected beyond the 'estimated' amount of the bounty or of the subsidy granted. In order to arrive at this estimate, the majority of the Group considered it normal, and at least desirable, that the country which became aware of the existence of a subsidy and which ascertained the injury which this subsidy caused, should enter into direct contact with the government of the exporting country. It was also desirable that the latter country should give information requested without delay. This would after all be in its own interest in that it would avoid the imposition of a countervailing duty on its exports at a rate which, failing this information, might be fixed at too high a level".[74]

The 1991 Panel Report on "United States - Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada"

> "... noted in this respect that the words in Article VI:3 'to determine' and 'estimated' as well as the practices of the contracting parties under that provision, as reflected in Part I of the Subsidies Code, indicate that the decision as to the existence of a subsidy must result from an examination of all relevant facts. The Panel considered that the issue was not whether the United States had applied a methodology for establishing facts consistent with Article VI:3 but rather whether the facts which the United States did take into account were all the facts relevant for the determination it has made. The Panel therefore proceeded to examine whether the United States, by basing its determination that pork production is subsidized in Canada on a finding that the conditions set out in Section 771B had been met, had demonstrated that it had taken into account all facts necessary to meet the requirements of Article VI:3".[75]

See also the Guidelines on Amortization and Depreciation adopted by the Committee on Subsidies and Countervailing Measures.[76]

(3) Multiple currency practices

See Interpretative Note 2 *Ad* paragraphs 2 and 3, which provides that "Multiple currency practices can in certain circumstances constitute a subsidy to exports ... or a form of dumping by means of partial depreciation of a country's currency ... By 'multiple currency practices' is meant practices by governments or sanctioned by governments'. See also material on multiple exchange rates under Article XVI; see also the memorandum of the International Monetary Fund on multiple currency practices, annexed to the Report of the Review Working Party on "Quantitative Restrictions".[77]

6. Paragraph 4

(1) "exemption ... from duties or taxes"

"All but one member of the Working Party expressed views on the legal aspects of the matter. They agreed that

See also the provisions on determination of injury for purposes of Article VI, in Article 3 of the 1967 and 1979 Agreements on Implementation of Article VI of the General Agreement and Article 6 of the 1979 Agreement on Interpretation and Applicatio

"The Panel noted that while the decision of the New Zealand Minister of Customs to impose anti-dumping duties was based solely on material injury having been caused by the imports in question, the New Zealand delegation had also alleged before the Panel the existence of threat of material injury. In view of the high import penetration of the New Zealand transformer market, the significant increase in imports from all sources over one single year and the minimal impact of the actual Finnish imports in question, the Panel saw no reason to assume that imports from Finland would in the future change this picture significantly. The Panel noted in addition that at the time the ministerial decision was taken the Finnish exporter had not attempted to make any further sales to the New Zealand market. The Panel could therefore not agree that the imposition of anti-dumping duties could have been based on threat of material injury in terms of Article VI".[91]

The 1993 Panel Report on "Korea - Anti-dumping Duties on Imports of Polyacetal Resins from the United States" examined an injury determination by the Korean authorities which was partially based on a finding of threat of injury:

"... It followed from the text of Article 3:6 that a proper examination of whether a threat of material injury was caused by dumped imports necessitated a prospective analysis of a present situation with a view to determining whether a 'change in circumstances' was 'clearly foreseen and imminent'. Interpreted in conjunction with Article 3:1, a determination of the existence of a threat of material injury under Article 3:6 required an analysis of relevant future developments with regard to the volume, and price effects of the dumped imports and their consequent impact on the domestic industry."

...

"... While Korea had argued that reliance on capacity of foreign producers to supply the Korean market was consistent with the Recommendation of the Committee on Anti-Dumping Practices, this Recommendation provided for the consideration of whether there existed 'sufficient freely disposable capacity of the exporter

"The Panel considered that the purpose of countervailing duties is to allow signatories to counteract injury from subsidized imports, not from a general decline in world market prices. Only a generally applicable import tariff, not however a countervailing duty on imports from a particular country, can normally prove effective in raising the domestic price when there is a general decline in world prices. The fact that in the present case the countervailing duty may have been partially effective in raising the price of grain corn in Canada, in that the United States was the only viable source for imports given the existence of phytosanitary regulations which effectively barred all other imports, does not relieve Canada of the duty of making an injury determination in accordance with Article 6, namely, of showing that subsidized imports are the cause of material injury. ..."[97]

(5) "domestic industry"

The Sub-Committee that considered the Havana Charter article which became Article VI noted in its report: "The Sub-Committee desired it to be understood that, where the word 'industry' is used in the Article, it includes such activities as agriculture, forestry, mining etc., as well as manufacturing".[98]

See the definition of "domestic industry" for purposes of determining injury in terms of Article VI of the GATT, in Article 4 of the 1967 and 1979 Agreements on Implementation of Article VI of the General Agreement and Article 6:5 and 6:7-9 of the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement[101]: these definitions provide:

> "In determining injury, the term 'domestic industry' shall ... be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly subsidized product, the industry may be interpreted as referring to the rest of the producers ...".

A footnote to this paragraph in the 1979 Agreements called for a group of experts to develop a definition of the

structure of the industries was such that wineries did not normally grow their own grapes but bought them from the grape-growers for processing. In view of this situation, the Panel found that, irrespective of ownership, a separate identification of production of wine-grapes from wine in terms of Article 6:6 of the Code was possible and that therefore in fact two separate industries existed in the United States - the growers of wine-grapes on the one hand and the wineries on the other. Bearing in mind its terms of reference, the Panel did not consider it appropriate to examine the structure of the wine industry in other countries or the situation in other product sectors.

"The finding which the Panel reached was supported by the fact that in a previous countervailing duty investigation on wine imports, which had been conducted under the unamended version of Section 771(4)(a)

was of the opinion that the initiative should come from the third country involved".[107] Further on this subject, the Group's Second Report provides:

> "The Group was of the opinion that the situation of third countries was fully dealt with in Article VI, paragraph 6, which related to cases where countries could levy an anti-dumping duty on behalf of third countries.
>
> "In these circumstances, and contrary to one of the basic principles of Article VI, paragraph 6(a), the imposition of an anti-dumping duty was not contingent upon the existence of injury caused to an industry of the importing country, but upon injury caused or threatened to an industry of one or more third countries which were suppliers of the importing country.
>
> "In order to avoid any misunderstanding, the Group wished to stress that a third country, in order to justify a request to an importing country to impose measures against another country, should produce evidence that the dumping engaged in by the other country was causing material injury to its domestic industry and not only to the exports of the industry of that third country. However, in cases where the importing country granted a request from a third country, anti-dumping measures should not be imposed until and unless the CONTRACTING PARTIES had approved the proposed measure (Article VI, paragraph 6). ...
>
> "In any case, there was no doubt that the initiation of the procedures of resorting to the CONTRACTING PARTIES laid down in Article VI, paragraph 6, should be left to the discretion of the importing country. Consequently, the Group was of the opinion that where the importing country found it impossible or undesirable to grant the request from a third country which claimed injury, the third country had no right to retaliatory measures but could have resort to Articles XXII and XXIII of the General Agreement".[108]

The provisions of sub-paragraph 6(b) and 6(c) have, so far, not been invoked and no waiver from the provisions of paragraph 6(a) has been requested.[109]

"... in conducting [its] examination, the Panel took into account that Article VI:3 is an exception to basic principles of the General Agreement, namely that ... charges of any kind imposed in connection with imports must meet the most-favoured-nation standard (Article I:1). The Panel also noted in this context that discriminatory trade measures may under the General Agreement only be taken in expressly defined circumstances (e.g. Article XXIII:2)".[117]

In the 1992 Panel Report on "United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil," "The Panel considered that the rules and formalities applicable to countervailing duties, including those applicable to the revocation of countervailing duty orders, are rules and formalities imposed in connection with importation, within the meaning of Article I:1".[118]

"The Panel noted that Article I would in principle permit a contracting party to have different countervailing duty laws and procedures for different categories of products, or even to exempt one category of products from countervailing duty laws altogether. The mere fact that one category of products is treated one way by the United States and another category of products is treated another is therefore in principle not inconsistent with the most-favoured-nation obligation of Article I:1. However, this provision clearly prohibits a contracting party from according an advantage to a product originating in another country while denying the same advantage to a *like product* originating in the territories of other contracting parties."[119]

"The Panel found that the United States failed to grant, pursuant to Section 104(b) of the Trade Agreements Act of 1979, to products originating in contracting parties signatories to the Subsidies Agreement the advantage accorded in Section 331 of the Trade Act of 1974 to like products originating in countries beneficiaries of the United States GSP programme, that advantage being the automatic backdating of the revocation of countervailing duty orders issued without an injury determination to the date on which the United States assumed the obligation to provide an injury determination under Article VI:6(a). Accordingly, the Panel concludes that the United States acted inconsistently with Article I:1 of the General Agreement".[120]

2. Article II

In the 1962 Panel Report on "Exports of Potatoes to Canada", the Panel examined a complaint by the United States concerning the imposition by Canada of an import charge on potatoes in addition to the bound specific duty, as a result of the application under the Canadian Customs Act of "values for duty" on potatoes imported below a certain price. The Panel found that "the imposition of an additional charge could not be justified by Article VI of the General Agreement, since the main requirement laid down in paragraph 1(a) of the Article was not satisfied" (see page 226 above).

"The Panel came to the conclusion that the measure introduced by the Canadian Government amounted to the imposition of an additional charge on potatoes which were imported at a price lower than Can.$2.67 per 100 lbs. The Panel considered that this charge was in addition to the specific import duty which had been bound at a rate of Can.$0.375 per 100 lbs. Since no provisions of the General Agreement had been brought forward for the justification of the imposition of an additional charge above the bound

3. Article XVI

During discussions at London on Article 11 of the proposed Charter on anti-dumping and countervailing duties, it was stated that "Article 11 would permit countervailing duties to prevent injury, even though the subsidy granted by the exporting country was justified under provisions of the Charter".[122]

The Report of the 1954-55 Review Working Party on "Other Barriers to Trade", which drafted the provisions of Section B of Article XVI, notes that the "Working Party ... agreed ... that nothing in the terms of Section B of Article XVI, relating to export subsidies, should be considered as limiting the scope of consultations envisaged under other provisions of the Agreement or as affecting in any way the right of a contracting party to impose countervailing and anti-dumping duties".[123]

The Second Report of the Group of Experts on Anti-Dumping and Countervailing Duties provides: "The fact that the granting of certain subsidies was authorized by the provisions of Article XVI of the General Agreement clearly did not debar importing countries from imposing, under the terms of Article VI, a countervailing duty on the products on which subsidies had been paid".[124]

The Panel Report on "United States - Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada"

> "... noted that the purposes of Article VI and Article XVI were fundamentally different: the former provision provides for a right to react unilaterally to subsidies while the latter sets out rules of conduct and procedures relating to subsidies. It is for these reasons not justified in the view of the Panel to conclude from the references to trade effects in Article XVI:1 that Article VI:3 permits contracting parties to offset the full trade effects caused by a subsidy granted to the producers of a product by levying countervailing duties without it having been determined that subsidies have been bestowed on these other products".[125]

The Panel on "United States - Definition of Industry Concerning Wine and Grape Products", which was established under the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement to examine a dispute regarding a provision of the United States anti-dumping and countervailing duty laws, found, *inter alia*:

> "The Panel ... considered the argument made by the US delegation that Article 9 of the Code was no less pertinent to the definition of 'domestic industry' that might be injured by subsidization than to the scope of producers whose exports might be subsidized. The Panel could see no relationship between Article 9 which prohibits the use of export subsidies on non-primary products, on the one hand, and Article 6:5 which contains the definition of 'domestic industry' for countervailing duty purposes, on the other. Quite apart from the fact that the two Code provisions in question had a different basis in the General Agreement itself, i.e. Article XVI in the case of Article 9 of the Code and Article VI in the case of Article 6:5 of the Code, the Panel was of the view that the definition of 'certain primary products' under Article 9 was made for different purposes than defining 'domestic industry' and that it could therefore not be used to interpret an otherwise explicit wording of Article 6:5. The processing permitted under the definition of 'certain primary products' could be, and in many instances was, a separate economic process identifiable in terms of Article 6:6 of the Code. Once such a separate identification was possible (e.g. because of the structure of the production), the economic interdependence between industries producing raw materials or components and industries producing the final product was not relevant for the purposes of the Code. There was therefore, in the Panel's view, no basis for the contention that two products had to be considered as 'like products', and consequently the industries concerned to be one and the same, just because a primary product might continue to be considered a primary product even after processing ...".[126]

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[122]EPCT/C.II/48, p. 3.
[123]L/334 and Addendum, adopted on 3 March 1955, 3S/222, 226, para. 20.
[124]L/1141, adopted on 27 May 1960, 9S/194, 200, para. 32.
[125]38S/44.
[126]SCM/71, adopted on 28 April 1992, 39S/436, 447, para. 4.5.

Article VI and the Agreement on Interpretation and Application of Articles VI, XVI and XXIII are notified to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures.[131]

"2. The dispute settlement provisions of the Agreement shall not apply:

"(a) to disputes brought against a Party to the Agreement which is a Member of the WTO if the dispute concerns a measure that is identified as a specific measure at issue in the request for the establishment of a panel made in accordance with Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 of the WTO Agreement and the dispute settlement proceedings following that request are being pursued or are completed; and

"(e) Parties will make their best efforts to expedite to the extent possible under their domestic legislation investigations and reviews referred to in paragraph (a), and to expedite procedures for the settlement of disputes so as to permit Committee consideration of such disputes within the period of validity of this Decision.

"This Decision shall remain in effect for a period of two years after the date of entry into force of the WTO Agreement. Any Party to the Agreement as of the date of this Decision may renounce this Decision. The renunciation shall take effect upon the expiration of sixty days from the day on which written notice of renunciation is received by the person who performs the depositary function of the Director-General to the CONTRACTING PARTIES to GATT 1947."[142]

On 8 December 1994 the Prepedh(y on c(P)T2or-Gene)6.2(r)16.3mat6.2(r)5.3(C)6.2(r)

IV. RELEVANT DOCUMENTS

See below at the end of Article X.