ANTI-DUMPING CHECKLIST

Comments by the United Kingdom

At the meeting on 3-4 March 1966 of the Group on Anti-Dumping Policies, it was agreed that governments should be invited to submit by 15 April 1966 their specific and detailed views on items VI, VII and VIII of the anti-dumping checklist it being understood that some governments might not submit views on certain items (cf. document TN.64/NTB/W/8).

The following comments have been received from the Government of the United Kingdom. (Further communications from governments will be circulated as addenda to this document.)

1. The following are short comments on only some of the points arising on items VI, VII and VIII because the views of the United Kingdom on all the points covered by these items are reflected and explained in the relevant provisions and rationales of the Draft Code. Moreover, the paper circulated as TN.64/NTB/38 on 14 June 1965 sets out in detail the views of the United Kingdom on three matters covered by these items, namely, the initiation of anti-dumping investigations by the authorities of the importing country, the disclosure of information provided by interested parties in a case, and withholding of appraisement as a means of provisional action.

VI. ANTI-DUMPING DUTIES

A. Imposition: obligatory or permissive

2. The purpose of the GATT rules on anti-dumping action is, and presumably must always be, to provide against indiscriminate and unjustifiable use of anti-dumping and countervailing powers. Article VI therefore lays down the limited circumstances in which anti-dumping action is permissible. In the view of the United Kingdom it is inconceivable that this purpose could be furthered by international rules which made anti-dumping action obligatory in any circumstances.
3. In the United Kingdom view it would be wrong in principle and impossible in practice to attempt to define the circumstances in which the importing country should decide not to take action even though it was entitled under the GATT rules to do so, i.e. when it was satisfied that the imports were dumped and were causing or threatening material injury to the domestic industry. Only the importing country can decide in each case whether or not action is in its overall national interest.

B. Applicability

4. Anti-dumping action cannot be taken against imports which are not being dumped. There could, therefore, be no question of applying anti-dumping duties to all imports from all sources unless it were established that all the imports were dumped.

5. In the United Kingdom view anti-dumping action should not be imposed on a discriminatory basis and action should be taken against all the imports which are found to be dumped. For the reasons set out in the rationale to Provision 19 of the Code, it would be wrong in principle and impracticable to discriminate between the individual countries or between individual suppliers of the dumped goods.

C. Amount of duty

6. In the United Kingdom view the amount of duty imposed should be as provided for in Provisions 15 and 16 of the Code for the reasons explained in the rationale to those Provisions.

D. Retroactive application of duties

7. For the reasons explained in the rationale to Provision 10, duties should not be applied retroactively except in the circumstances covered by Provision 10 (c) of the Code.

E. Duration

8. In the United Kingdom view anti-dumping duties should remain in force only so long as they are genuinely necessary - see Provision 20 of the Code.

VII. PROVISIONAL MEASURES

9. Provisional action - that is, action taken before full investigation has established the margin of dumping and material injury and the final decision has been made - is only justified in the United Kingdom view in the exceptional circumstances when the authorities of the importing country consider that there is
convincing evidence to show that the allegedly dumped goods are in fact being dumped, and that the dumped supplies imported during the period of investigation will cause material injury to the domestic industry. Provisional action should not therefore be taken on evidence of dumping alone, or on evidence of material injury alone. The provisional measures should be cancelled and the case dismissed immediately the authorities are satisfied that there is insufficient evidence of either dumping or of injury for proceeding with the case (see Provision 5 (a) and (b) of the Draft Code).

10. The provisional duties imposed or the security required should not be greater than the margin of dumping provisionally established by the available evidence in regard to the export and domestic prices of the suppliers. If a case is rejected or if the duties finally imposed are less than the provisional duties or deposits paid, the importers shall reimburse as appropriate (see Provision 6 of the Draft Code).

11. To prevent the unjustifiable disruption of trade caused by protracted investigations and the uncertainty of exporters and importers in regard to their final liabilities, provisional measures should not, in the United Kingdom view, be imposed in any one case against the suppliers of any one country for a period longer than three months. Appraisement of the valuation of the goods for normal protective duties and the clearance of the goods should proceed unaffected by the provisional anti-dumping measures.

VIII. INVESTIGATION PROCEDURES AND PROCEDURAL FAIRNESS

A. Initiation of Investigations

12. The conditions governing the initiation and acceptance of applications for anti-dumping action determine to a large extent the number of anti-dumping cases which arise and the number which are eventually dismissed because full investigation shows that action is not justified. In the view of the United Kingdom, therefore, it is of crucial importance that these conditions should be such as to reduce to the minimum the number of unnecessary anti-dumping investigations, and thereby prevent unjustifiable disruption of trade.

13. The initiation of anti-dumping cases by the authorities of the importing countries is in itself a violation of the principle of material injury and a negation of its purpose, because only the domestic producers themselves can be aware at first hand of the effects which they attribute to the alleged dumping, and only they can provide adequate evidence in regard to this. Initiation of cases by the authorities must therefore result in a large number of investigations which would not otherwise have arisen and which are unjustifiably based on evidence of dumping alone, or on insufficient information in regard to the effects of the dumped imports on the domestic industry. (See Provision 1 and rationale of the Code).
14. Similarly, in order to prevent acceptance of applications which are not well founded, and consequently to reduce the number of cases which investigations will prove to be unjustified, the United Kingdom considers that it is most important that applications should not be accepted from the domestic industries which are not supported by adequate information in regard to dumping and in regard to the effects of the allegedly dumped goods on the domestic producers. (See Provision 3 and rationale of the Code).

15. The views of the United Kingdom on:
   (i) publicity of investigation;
   (ii) confidential treatment of information, and
   (iii) procurement of information from exporters

are reflected in Provision 4 of the Code, and explained in the rationale to that Provision.