

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)
Negotiating Group on MTN Agreements
and Arrangements

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE
(ANTI-DUMPING CODE): ASPECTS OF THE AGREEMENT
PROPOSED FOR NEGOTIATION

Note by the Secretariat

1. At the second meeting of the Negotiating Group on MTN Agreements and Arrangements, held on 27 May 1987, the secretariat was requested to prepare factual background notes on those aspects of the MTN Agreements and Arrangements which had been raised in the discussions. The delegation of Korea had circulated, at that meeting, a document (MTN.GNG/NG8/W/3) which identified a number of issues for negotiation under the Anti-Dumping Code. In response to this request the secretariat prepared a note which provided some background information on the issues raised by Korea (MTN.GNG/NG8/W/7). At the fourth meeting of the Negotiating Group the secretariat was requested to revise this background note in light of further submissions which had been received from India (MTN.GNG/NG8/W/9), Korea (MTN.GNG/NG8/W/10), Japan (MTN.GNG/NG8/W/11) and the Nordic countries (MTN.GNG/NG8/W/12 and 15). This revised background note is reproduced herewith. For each of the issues identified it provides information on relevant past discussions in the Committee on Anti-Dumping Practices and, where applicable, in the Ad-Hoc Group on the Implementation of the Anti-Dumping Code. Where applicable the note also includes information on relevant decisions taken.

I. DETERMINATION OF DUMPING

I.1 Introduced into the commerce of another country (in the context of the concept of sale)

Relevant provision: Article 2:1

Issues raised in MTN.GNG/NG8/W/3, 10, 11 and 15

2. Various participants have drawn attention to the fact that the expression "introduced into the commerce of another country" lends itself to differing interpretations, in particular with respect to the point in time at which an anti-dumping investigation may be initiated. One of

these participants has expressed the view that in principle an anti-dumping investigation should not be initiated unless the product in question is actually imported (MTN.GNG/NG8/W/11, page 2). Another participant has taken the view that while as a general rule an anti-dumping investigation should be initiated at the latest stage possible, i.e. when the product in question is actually imported, there should be a possibility in certain exceptional cases to initiate an investigation at an earlier stage, e.g. after the submission of a binding offer to sell (MTN.GNG/NG8/W/15, p.2). It has also been argued that, while offers to sell should not be the basis for the opening of an anti-dumping investigation, sales concluded might be considered as involving the introduction of the product into the commerce of another country and that if such sales take place at dumped prices, they could constitute a threat of material injury (MTN.GNG/NG8/W/10, p.2).

Earlier Discussions

3. The question of how to define the phrase "introduced into the commerce of another country" in Article 2:1 of the Code, and the related issue of the definition of sale, have been the subject of fairly extensive discussion in the Committee on Anti-Dumping Practices and in the Ad Hoc Group on the Implementation of the Anti-Dumping Code.

4. The earliest discussions took place in October 1980 in the Committee, in the context of Canada's draft anti-dumping legislation (ADP/M/3, paragraphs 39-40). The matter was also discussed at the same meeting in relation to Canada's semi-annual report on anti-dumping actions (ADP/M/3, paragraph 74). The essential question was whether it was legitimate to open an anti-dumping investigation with respect to goods which had not actually been imported into the country conducting the investigation. In other words, the issue was whether goods could be said to have been "introduced into the commerce of another country" at the point when some kind of contractual obligation was entered into, such as an irrevocable tender, but before any merchandise crossed international frontiers as a consequence of such a contractual commitment. A further discussion of this question took place at the October 1981 meeting of the Committee during its examination of national legislation and implementing regulations (ADP/M/6, paragraphs 10-11).

5. At its tenth and eleventh meetings, in April and November 1983, the Committee discussed an anti-dumping investigation by Canada against certain electric generators exported by Italy (ADP/M/10, paragraphs 51-53 and ADP/M/11, paragraphs 53-59). The discussion at the eleventh meeting followed a request by the EEC for conciliation in terms of Article 15:3 (ADP/16). This case arose as a result of bids by an Italian firm to supply hydro-electric generators to certain development projects in Canada. The basic point of difference in this case was whether an irrevocable tender, irrespective of whether or not it was accepted, should be considered to mean that the product in question had been "introduced into commerce" and therefore was subject to anti-dumping action. Aspects of this issue were further discussed by the Committee in May 1984 and April 1985 (ADP/M/12, paragraphs 49-51 and ADP/M/15, paragraphs 15-16, 34 and 35).

6. There were a number of Working Papers submitted to the Ad Hoc Group on the Implementation of the Anti-Dumping Code on the question of the definition of sale and on related matters. In Working Papers Nos. 6, 13 and 13/Rev.1, the United States expressed the view that the definition of sale should be based on a consideration of the nature of a transaction and not on a narrow concept of "sale". In this view, an irrevocable offer to supply goods at a fixed unit price constitutes a sale. These working papers also make reference to certain questions concerning the determination of normal value.

7. In Working Papers Nos. 22 and 22/Rev.1, Canada examined the meaning of the "ordinary course of trade" in Article 2:1, as related to the notion of "entering into the commerce" of another country. It is suggested in these papers that in certain circumstances the application of the appropriate "ordinary course of trade" concept would lead to the conclusion that goods have been introduced into the commerce of an importing country at the time when these goods are offered for sale by means of a binding tender. Such circumstances might include, for example, a situation where high-cost, custom designed, and infrequently ordered equipment is offered by tender and where there is a significant time lag between the sale of such equipment and its delivery.

8. Finally, in Working Paper No. 23 the EEC expressed the view that the Code did not pronounce clearly on the stage at which goods could be determined to have been "introduced into commerce". The paper argues basically for a definition of "introduction into commerce" which involves actual importation, but acknowledges that in very exceptional circumstances an argument might be made that a threat of injury justifies the initiation of anti-dumping action on the basis of a sales contract. However, it is also emphasized in the paper that such practices run the risk of causing harassment to foreign bidders. It is further suggested that the initiation of anti-dumping proceedings prior to the physical transfer of goods might involve a problem with respect to the disclosure of confidential information and might also dilute the conditions set out in the Code for a finding of a threat of injury.

I.2 Like product

Relevant provision: Article 2:2

Issue raised in MTN.GNG/NG8/W/3, 10 and 11

9. In some of the written submissions which have been received so far participants have mentioned several reasons why it is important to have a clear and precise definition of the term "like product". One participant has referred to the practice whereby parts of finished products are included in an anti-dumping investigation of imports of such products and stated its view that there is a need to clarify the definition of the term "like product" with a view to preventing such practices (MTN.GNG/NG8/W/3, p.2 and MTN.GNG/NG8/W/10, pp.2-3). Another participant has raised the relevance of the question of the definition of the term "like product" in

connection with the criteria for the use of home market sales to determine normal value, the definition of the concept of "domestic industry" and the definition of the parties entitled to file an anti-dumping duty petition (MTN.GNG/NG8/W/11, p.2).

Earlier discussions

10. The Committee has discussed the definition of the term "like product" on some occasions (see e.g. ADP/M/3, paragraphs 37-39 and ADP/M/7, paragraph 40). The question of the treatment of parts and components was discussed at the meeting of the Committee in June 1987 as a result of proposed legislative amendments in the EEC and the United States (ADP/M/19, paragraphs 24-25, 27-28, 30-32 and 60 (vi)). In the case of the EEC, a proposed amendment to Regulation 2176/84, designed to deal with the problem of circumvention of anti-dumping duties, provoked several Parties to express concern that the amendment went further than necessary to deal with the problem of the circumvention of anti-dumping duties on a product through the importation of components of that product. Similarly, it was suggested that anti-circumvention provisions contemplated in draft legislation in the United States did not take full account of the requirements set out in the Anti-Dumping Code for the initiation of an anti-dumping action. The Committee reverted to these issues at its meeting held in October 1987. At that meeting it discussed in particular the definitive version of the amendment to Regulation 2176/84 which had been adopted by the EEC Council of Ministers in June 1987.

I.3 Circumstances in which normal value cannot be established on the basis of home market prices in the exporting country

Relevant provision: Article 2:4 ("When there are no sales ... proper comparison, ...")

Issues raised in MTN.GNG/NG8/W/11

11. One participant has argued that there is a need to clarify the situations in which, under Article 2:4, normal value may be determined on the basis of export prices to third countries or on the basis of a constructed value calculation. This participant has in particular drawn attention to the need to give further precision to the expressions "no sales of the like product" and "the particular market situation" which appear in the first part of Article 2:4 (MTN.GNG/NG8/W/11, p.2).

Earlier discussions

12. The Committee has on some occasions discussed the conditions under which the Code permits the determination of normal value on the basis of one of the two methods mentioned in Article 2:4. At the meeting held in October 1980 this issue was raised in connection with the Canadian anti-dumping legislation (ADP/M/3, paragraphs 47 and 50). At the meeting

held in April 1982 the delegation of India made some comments on an anti-dumping investigation by Canada in which normal value had been established on the basis of a constructed value and expressed the view that in this case, normal value should have been established on the basis of home market sales (ADP/M/7, paragraphs 33-40). No Working Papers have been submitted to the Ad-Hoc Group on the issue of the precise interpretations of the expressions referred to in MTN.GNG/NG8/W/11, p.2.

I.4 Export prices to third countries and constructed value as alternative methods to determine normal value in cases where normal value cannot be established on the basis of home market sales (Article 2:4)

Relevant provision: Article 2:4

Issues raised in MTN.GNG/NG8/W/3, 10 and 11

13. One participant has pointed out that some Parties to the Code only seldom make use of export prices to third countries in situations where the normal value cannot be established on the basis of home market sales and that this may, under certain circumstances, adversely affect the interests of exporting countries (MTN.GNG/NG8/W/3, p.2). This participant has suggested that there should be an order of preference between the use of export prices to third countries and constructed value (MTN.GNG/NG8/W/3, p.2). The same suggestion has been made in MTN.GNG/NG8/W/11 (p.2).

Earlier discussions

14. There has been some discussion of this issue in the Committee, in particular in the context of the Committee's examination of anti-dumping investigations reported in the semi-annual reports (see e.g. ADP/M/7, paragraphs 33 and 38). However, no Working Papers have been submitted on this issue for discussion in the Ad-Hoc Group.

I.5 Constructed value methodology

Relevant provision: Article 2:4

Issues raised in MTN.GNG/NG8/W/3, 10 and 11

15. Some participants, referring to practices of certain Parties to the Code, have argued that there is a need to provide more precision and uniformity regarding the calculation of the various elements of a constructed value. Attention has been drawn to the practice whereby fixed percentages are used for the calculation of general expenses and profits (MTN.GNG/NG8/W/10, p.4, MTN.GNG/NG8/W/11, p.2). Another issue which has been raised is the calculation of a constructed value in cases in which the initial costs are high and in which domestic prices are set at a level reflecting anticipated future cost declines (MTN.GNG/NG8/W/11, p.4).

Earlier discussions

(a) Administrative, selling and other costs

16. Reference was made at the Committee's meeting in April 1983, in the context of a discussion of Australian anti-dumping legislation, to the requirement in Article 2:4 that the amount attributed for administrative, selling and other costs and for profit in the calculation of normal value must be reasonable (ADP/M/10, paragraph 5).

17. In addition, the EEC presented Working Paper No. 10 and Rev.1, Rev.2 and Rev.3 to the Ad-Hoc Group. This paper addresses the question of how production costs, including administrative and selling costs, and also profits, are to be assessed in the calculation of constructed value. (See paragraph 19 below in regard to the "10 per cent minimum rule".) The successive versions of the paper take account of discussions in the Group. The paper notes that the Code does not specifically define production costs and suggests that these should be established "on the basis of all costs, in the ordinary course of trade, both fixed and variable, of materials and manufacture. To this should be added reasonable amounts for administrative, selling and other costs and for profits in order to arrive at a true surrogate for a normal value based on domestic prices." (Paragraph 2 of Working Paper No. 10/Rev.3).

18. Paragraphs 3 and 4 of the third revision of the paper address certain aspects of the question of how items are to be valued in the calculation of normal value:

"3. All costs taken into consideration should be those actually incurred by the producer concerned and verified from his accounting records as long as the investigating authorities are satisfied that such costs are reasonable. Where costs cannot be verified and directly allocated to the product concerned, they shall normally be allocated in proportion to the turnover for each product and market under consideration. In cases where the investigating authorities have reason to believe that this method is inappropriate, the costs shall be allocated on a reasonable basis.

4. Where a producer obtains materials or production facilities from a related company at transfer prices which are lower than the prices for sales to unrelated parties or the prevailing market price in the ordinary course of trade or where these are supplied under a compensatory arrangement, it is considered that these transactions may be treated as not having been made in the normal course of trade. In this case these costs may be valued as the constructed value of the inputs, or the costs to provide the production facilities, or their prevailing market price in the ordinary course of trade."

19. In Working Paper No.10/Add.1 the United States made a number of points about the first version of the EEC paper. In particular, the United States

defended the use of a "10 per cent minimum rule" for general, selling and administrative expenses. The paper notes that legislative authority for the use of this kind of pricing rule derives from 1921 legislation and agrees that the Code is silent on this matter, calling only for the addition of a "reasonable amount" to cover these expenses. It is also noted in the paper that the 10 per cent minimum has been applied very rarely, as these expenses have generally been found to exceed 10 per cent of the product price.

(b) Profit

20. In addition to the brief reference to the estimation of profit in the calculation of constructed value mentioned in (a) above (ADP/M/10, paragraph 5), there were a number of other discussions of this issue in the Committee.

21. Most of these discussions related to the use of an 8 per cent profit rule by the United States in the calculation of constructed value. At the Committee's third meeting, in October 1980, it was argued that the provisions of the Code made it necessary to adopt a case by case approach in the calculation of profit because a fixed margin rule would not necessarily correspond to the actual level of profit (ADP/M/3, paragraph 28). At the same meeting (paragraph 89) the Committee:

"noted that Article 2:4 of the Agreement provided that 'As a general rule the addition of profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.' The Committee urged the United States to examine the 8 per cent rule contained in its legislation in the light of the above quoted Article and agreed to discuss the matter at a subsequent meeting."

22. The question of using a fixed margin to calculate profit was raised again at the Committee's meetings in April 1981 and April 1982 (ADP/M/5, paragraph 11 and ADP/M/7, paragraph 12). On the latter occasion there was a discussion between the EEC and the United States on the consistency of the 8 per cent rule with Article VI of the General Agreement and Article 2:4 of the Code. The United States expressed the view that use of the 8 per cent rule was consistent with its international obligations.

23. There was a reference at the October 1982 meeting of the Committee (ADP/M/9, paragraphs 51-52) to the use by Australia of an 8 per cent profit rate with respect to an anti-dumping investigation on transformers from Japan. Japan argued that the application of this rate was not consistent with the requirement of Article 2:4 of the Code regarding the use of a profit rate which did not normally exceed the rate realized on domestic sales of products of the same general category in the country of origin. Australia considered that the rate applied corresponded to the average profit that had been obtained in the electrical goods industry in Japan, and as such was in conformity with Article 2:4.

24. The EEC submitted a paper on the 8 per cent rule to the Ad-Hoc Group on the Implementation of Anti-Dumping Practices (Working Paper No. 11). It is argued in this paper that "the profit margin to be applied should be the rate which is actually made by the producer in the country of origin, as verified from his accounting records, since this enables account to be taken of the particular situation of the producer in question" (paragraph 3). Although it is recognised that in exceptional circumstances it may be necessary to apply alternative methods of calculation (paragraph 4), the paper concludes in its final paragraph that "the application of a statutory minimum profit margin is inconsistent with the provisions of the Code."

25. In Working Paper No.11/Add.1 the United States contests the EEC view in this matter:

"To rebut the EEC allegation, the US Delegation points out that, like the 10 per cent rule for general sales and administrative expenses, this mandatory provision dates back to 1921 legislation. It is fully consistent with US international obligations. Further, the 8 per cent figure is a before-tax amount. With corporate income taxes typically averaging 50 per cent, the resulting net profit of 4 per cent can hardly be called unreasonable. The Code allows the practice, calling on the Signatories to add a "reasonable amount" for profit. The EEC admits that there are circumstances (such as substantial sales at a loss by a firm) in which a surrogate for actual firm profits should be used. They thus recognize the problem of artificially low or non-existent profits. The methods they propose for choosing a surrogate profit level are imperfect, as is our own method, but the United States feels that both practices are 'reasonable'."

I.6 Elements for which an allowance should be made in the comparison between normal value and export price

Relevant provision: Article 2:6

Issues raised in MTN.GNG/NG8/W/3, 10, 11 and 15

26. Various participants have expressed the view that there is a need to provide more precise rules regarding the requirement of a fair comparison between the export price and the normal value. In this regard reference has been made to the treatment of differences in quantities sold, level-of-trade adjustments and the distinction between direct and indirect selling expenses. Regarding the distinction between direct and indirect selling expenses, it has been argued that the different treatment of direct and indirect selling expenses may lead to the establishment of an artificial dumping margin, in particular in cases in which export prices are reconstructed on the basis of the first sale to an independent buyer in the importing country (MTN.GNG/NG8/W/10, p.5).

Earlier discussions

27. The question of the comparison between normal value and export price has been discussed on a number of occasions in the Committee in the context of the examination of national anti-dumping legislation or in the context of the consideration of semi-annual reports of anti-dumping actions. Provisions relating to price adjustments in United States and Canadian legislation were the subject of comments at the Committee's October 1980 and October 1981 meetings, respectively (ADP/M/3, paragraph 28 and ADP/M/6, paragraphs 10-11). Certain Australian anti-dumping actions were referred to at the Committee's October 1982 meeting in regard to adjustments for such differences as those in conditions and terms of sale and taxation (ADP/M/9, paragraph 48). Related issues were raised in regard to United States anti-dumping action at the October 1983 meeting of the Committee (ADP/M/11, paragraphs 41-42) and to EEC action at the October 1985 meeting (ADP/M/16, paragraphs 65-67). No papers have been submitted to the Ad-Hoc Group on this matter.

I.7 Determination of normal values in cases referred to in the Second Supplementary Provision to paragraph 1 of Article VI of Annex I to the General Agreement

Relevant provision: Article 2:7

Issues raised in MTN.GNG/NG8/W/15

28. In the submission circulated in MTN.GNG/NG8/W/15 it has been suggested that the Negotiating Group examine some of the issues which have been considered by the Ad-Hoc Group on the Implementation of the Anti-Dumping Code (see document ADP/W/159). One of the issues mentioned in this submission is the "determination of normal values". This expression corresponds to the title of a number of Working Papers submitted to the Ad-Hoc Group on the determination of normal values in situations referred to in the Second Supplementary Provision to Article VI of the General Agreement.

Earlier discussions

29. The implementation of the Second Supplementary Provision to Article VI of the General Agreement has been the subject of discussion in the Committee on many occasions, in particular in the context of the examination of those national anti-dumping laws and/or regulations which provide that as a general rule, in the cases referred to in the Second Supplementary Provision, normal value shall be established on the basis of one of the methods mentioned in Article 15 of the Subsidies Code. Parties affected by such provisions have generally argued that this Second Supplementary Provision cannot constitute a basis for the a priori substitution of special rules to determine normal value for the general rules laid down in Article 2 of the Code. References to the Committee's discussions of this question are indicated below:

ADP/M/3, paragraphs 17-20 and 24: EEC anti-dumping legislation
ADP/M/3, paragraphs 48 and 49: Canadian draft anti-dumping legislation
ADP/M/10, paragraphs 11, 13 and 14: Australian anti-dumping legislation
ADP/M/1, paragraphs 21 and 27: Australian anti-dumping legislation
ADP/M/13, paragraph 8: Australian anti-dumping legislation
ADP/M/13, paragraphs 16-17, 20-21 and 24: EEC anti-dumping legislation
ADP/M/15, paragraphs 19 and 20: Canadian anti-dumping legislation
ADP/M/17, paragraph 9: Anti-dumping legislation of Pakistan
ADP/M/17, paragraphs 27 and 29: Anti-dumping legislation of Austria
ADP/M/19, paragraphs 10 and 12-14: Anti-dumping legislation of Japan

30. Working Papers No. 8 and No. 8/Rev.1 contain a proposal made by Romania on the interpretation of the Second Supplementary Provision to Article VI of the General Agreement. However, the Ad-Hoc Group has not submitted a draft recommendation on this question to the Committee.

I.8 Use of weighted averages in the calculation of export prices and normal values

Relevant provision: Article 2:6

Issue raised in MTN.GNG/NG8/W/11

31. In the context of the requirements of Article 2:6, one participant has referred to the practice whereby, in the calculation of the margin of dumping, different methods are used to determine export prices and normal values with respect to the use of weighted averages. The point has been made that the use of these different methods leads to arbitrariness in the calculation of the dumping margin insofar as the determination of the export price does not take into account export sales made at or above normal value (MTN.GNG/NG8/W/11, p.3).

Earlier discussions

32. In a few cases comments have been made in the Committee regarding the question of the use of weighted averages in the determination of export prices and normal values (e.g. ADP/M/18, paragraph 14, ADP/M/19, paragraph 103). This issue has not been examined by the Ad-Hoc Group.

I.9 Margin of dumping and exchange rate fluctuations

Relevant provision: Article 2:6

Issue raised in MTN.GNG/NG8/W/11

33. One participant has proposed that the Negotiating Group deal with the problem of sharp fluctuations of exchange rates in the context of the calculation of dumping margins. This participant has in particular noted

that consideration must be given to the fact that it takes some time before exchange rate fluctuations can be reflected in export prices (MTN.GNG/NG8/W/11, p.3).

Earlier discussion

34. There have been no discussions of this issue in the Committee or in the Ad-Hoc Group.

I.10 Input dumping

Issues raised in MTN.GNG/NG8/W/11 and 15

35. One participant, noting that in a certain country proposals are being considered to apply anti-dumping duties in cases of input dumping, has argued that there is no provision on this matter in the Code and that the application of anti-dumping duties in such cases could implicate bona fide third parties in anti-dumping investigations. This participant has argued that a common understanding should be reached on this matter, which should take into account the draft recommendation submitted on this issue to the Committee by the Ad-Hoc Group (MTN.GNG/NG8/W/11, p.4). In the submission circulated in MTN.GNG/NG8/W/15 it has also been proposed that the Negotiating Group examine this issue (MTN.GNG/NG8/W/15, p.5).

Earlier discussions

36. At the meeting of the Committee held in October 1982, the delegation of Australia raised the question of what it referred to as "secondary dumping" and a number of delegations expressed their views on this issue (ADP/M/9, paragraphs 72-77). The Ad-Hoc Group subsequently discussed a number of Working Papers on this question and in 1985 it submitted a draft recommendation to the Committee (ADP/W/83/Rev.2). This draft recommendation has not been adopted by the Committee (ADP/M/19, paragraphs 92-96). The proposed amendments to the anti-dumping legislation of one Party referred to in MTN.GNG/NG8/W/11 have been the subject of comments by other Parties at the meeting held in June 1987 (ADP/M/19, paragraphs 58 and 60-62).

II. DETERMINATION OF THE EXISTENCE OF MATERIAL INJURY

II.1 Price undercutting

Relevant provision: Article 3:2

Issues raised in MTN.GNG/NG8/W/3, 10 and 15

37. Some participants have proposed that, among the criteria to determine whether dumped imports have caused injury, consideration should be given to situations in which, as a result of internal competition in the market of

the importing country, exporters have to set export prices below prices of domestic sales in order to remain competitive in the market of the importing country (MTN.GNG/NG8/W/3, p.4, MTN.GNG/NG8/W/10, pp.6-7, MTN.GNG/NG8/W/15, pp.2-3).

Earlier discussions

38. This issue has not been discussed in the Committee or in the Ad-Hoc Group.

II.2 Margin of dumping and level of price undercutting

Relevant provision: Article 3:4

Issues raised in MTN.GNG/NG8/W/3 and 10

39. In the two submissions circulated in documents MTN.GNG/NG8/W/3 and 10, the point has been made that a causal link between the price of the dumped imports and the injury to domestic producers would not seem to be present where the margin of price undercutting is substantially larger than the margin of dumping (MTN.GNG/NG8/W/3, p.4, MTN.GNG/NG8/W/10, p.7).

Earlier discussions

40. The question whether the causality requirement in Article 3:4 implies that a comparison should be made between the margin of dumping and the margin of price undercutting has been discussed on some occasions in the Committee (e.g. ADP/M/13, paragraphs 34-36) but it has not been discussed in the Ad-Hoc Group.

II.3 Minimum market share or threshold of market penetration below which there would be a presumption of absence of material injury

Relevant provision: Article 3

Issues raised in MTN.GNG/NG8/W/3

41. One participant has expressed the view that Article 3 does not contain sufficient guidance to determine the point at which a degree of injury is to be regarded as material. This participant has further pointed out that the interpretation of the term "material injury" has been diluted considerably in the legislation of one Party. In order to give further precision to this term, this participant has proposed that there should be an understanding on a minimum market share or a threshold of market penetration below which there would be a presumption of absence of material injury (MTN.GNG/NG8/W/9, p.3). A similar proposal has been made in MTN.GNG/NG8/W/3 (p.3).

Earlier discussions

42. The question of the determination of material injury in cases involving imports accounting for a small share of domestic consumption or total imports of the product in question has been raised on many occasions (e.g. ADP/M/19, paragraph 100). In the Ad-Hoc Group this issue has been an element of the Group's discussion of the issue of cumulative injury assessment.

II.4 Cumulative injury assessment; cumulation across the Codes

Relevant provision: Article 3

Issues raised in MTN.GNG/NG8/W/3, 9, 10 and 15

43. In the proposal circulated in MTN.GNG/NG8/W/3 it has been suggested that there should be negotiation of a consensus on whether to recognize the practice of cumulative injury assessment (p.3). The participant which has formulated this proposal has argued that the practice of cumulation may deprive individual exporting countries of a meaningful injury determination based upon the impact of their own trade practices. The same participant has also referred to proposals being considered in a certain country for mandatory cumulation "across the Codes" and has expressed the view that such "cross-cumulation" is inconsistent with Article 3:4 of the Code and with Article VI:5 of the General Agreement (MTN.GNG/NG8/W/10, p.6). Concerns regarding the practice of cumulative injury assessment have also been expressed in MTN.GNG/NG8/W/9 (p.3) and the participant who has made this submission has proposed that this practice be proscribed. In the submission circulated in MTN.GNG/NG8/W/15 some provisions of the Code and of the General Agreement are mentioned which may be relevant to the question of cumulative injury assessment. The submission notes that these provisions do not give a clear answer on this issue and that there is therefore a need for further clarification with a view to the establishment of a restrictive practice of cumulative injury assessment (p.3).

Earlier discussion

44. There have been several discussions of the problem of "cumulation" in both the Committee and the Ad-Hoc Group. In the Committee the discussions have generally taken place in the context of semi-annual reports of anti-dumping actions or in the context of the examination of national anti-dumping legislation. A basic question has been whether the practice of cumulating dumped imports for the purposes of determining injury is consistent with the Anti-Dumping Code. Whilst it is recognised that the Code makes no explicit reference to the question, views vary as to whether this silence should be interpreted as condoning or condemning the practice. Several Parties consider cumulation a legitimate practice, at least in certain circumstances, while others generally consider that cumulation has the effect of weakening the benefits of the injury test. Some references to the Committee's discussion of this question are indicated below:

ADP/M/9, paragraphs 35-36	Semi-annual report of the EEC
ADP/M/10, paragraphs 38,42	Semi-annual report of the EEC
ADP/M/15, paragraphs 15-16,23,26,27	Legislation of Canada
paragraphs 34-36,40,44,46,48	Legislation of the United States
ADP/M/16, paragraph 22	Legislation of the United States
paragraph 54	Semi-annual report of Australia
paragraphs 68-69	Report on anti-dumping action by the EEC
ADP/M/17 paragraphs 45,47	Semi-annual report of Sweden
ADP/M/18 paragraphs 52,54	Legislation of the United States
paragraph 61	Semi-annual report of Sweden
ADP/M/19 paragraph 58,60(iv),61	Draft legislation of the United States
paragraph 99	Other business - investigation by the United States

45. In the Ad-Hoc Group the Nordic countries have submitted a Working Paper on cumulative injury assessment (Working Paper No. 25). The paper examines provisions of Article VI of the General Agreement and the Anti-Dumping Code which might be considered relevant to an examination of the legitimacy of the practice of cumulation. The examination is inconclusive. The paper then goes on to distinguish a number of different situations in which individual exporters may or may not find themselves included in a calculation of cumulation. The question whether it is legitimate to make a cumulative injury assessment "across the Codes", or in other words with respect to both dumped and subsidized imports, is also addressed, and the paper argues for separate assessment. Finally, the paper refers to the question whether cumulative injury assessments are made with respect to total dumped sales by an exporting country or whether the exporters of that country are assessed individually with respect to injury. It is suggested that this issue might be considered further by the Group. Following a discussion of this matter in the Group on the basis of Working Paper No. 25, the Nordic countries circulated an addendum to the paper. The addendum lists relevant questions concerning cumulative injury assessment for the Chairman of the Group to use as a basis for his continuing consultations on the subject.

II.5 Threat of material injury

Relevant provision: Article 3:6

Issues raised in MTN.GNG/NG8/W/3, 11 and 15

46. A number of participants have proposed that the Recommendation on Threat of Material Injury (ADP/25) be incorporated into the Code (MTN.GNG/NG8/W/3, p.3; MTN.GNG/NG8/W/11, p.5; MTN.GNG/NG8/W/15, p.5).

Earlier discussions

47. Discussions in the Ad-Hoc Group resulted in the adoption by the Committee of a Recommendation on Threat of Material Injury (ADP/25) at its meeting held in October 1985 (ADP/M/16, paragraph 73). This Recommendation is annexed to this note (Annex I). Following the adoption of this Recommendation, some Parties expressed their views on certain aspects of the Recommendation (ADP/M/16, paragraphs 74-76).

II.6 Definition of the term "domestic industry"

Relevant provision: Article 4.

Issues raised in MTN.GNG/NG8/W/3, 10 and 11

48. Attention has been drawn in MTN.GNG/NG8/W/3 and 10 to the fact that the expression "a major proportion" appearing in the first paragraph of Article 4:1 has been interpreted in differing manners with respect to percentages of total domestic production and it has been argued that there is a need for an agreed interpretation of this term (p.4 and p.8, respectively). It has also been noted that a clarification of the term "like product" is important in the context of the definition of the term "domestic industry" (see paragraph 9).

Earlier discussions

49. Aspects of the question of the definition of the term "domestic industry" have been discussed on numerous occasions in the Committee in the context of the Committee's examination of national anti-dumping laws and regulations and in the context of the examination of semi-annual reports. At the meeting of the Committee held in November 1983 there was some discussion on the term "a major proportion" in relation to the Australian anti-dumping legislation. Discussions of other elements of the definition of the term "domestic industry" are reflected in ADP/M/13, paragraphs 50-51, ADP/M/15, paragraphs 31 and 33, ADP/M/16, paragraph 6, ADP/M/17, paragraph 13, ADP/M/18, paragraph 26 and ADP/M/19, paragraph 18 (see also Section I.2 on the definition of the term "like product"). At its meeting held in October 1981, the Committee adopted the Report by the Group of Experts on the definition of the word "related" in Article 4:1 (ADP/M/5, p.19 and ADP/M/6, paragraph 58). No Working Papers have been discussed by the Ad-Hoc Group on the issue of the interpretation of "a major proportion" or on other aspects of the definition of the term "domestic industry".

III. INITIATION AND CONDUCT OF ANTI-DUMPING DUTY INVESTIGATIONS

III.1 Definition of the term "domestic industry" (See Section II.6)

III.2 Procedures to verify whether a petition has been filed "on behalf of" the domestic industry affected

Relevant provision: Article 5:1

Issues raised in MTN.GNG/NG8/W/3 and 10

50. In documents MTN.GNG/NG8/W/3 and 10 reference is made to the practice whereby a petition is presumed to have been filed on behalf of a domestic industry unless a majority of the domestic producers actively oppose the petition and it is proposed that there should be a requirement that petitions contain evidence showing that they are filed on behalf of the domestic industry as defined in Article 4:1 (MTN.GNG/NG8/W/, p.4).

Earlier discussions

51. The specific issue raised in MTN.GNG/NG8/W/3 and 10 regarding the procedure to verify whether a petition has indeed been filed on behalf of the domestic industry has not been discussed in the Committee and in the Ad-Hoc Group.

III.3 Evidence required for the opening of an anti-dumping investigation

Relevant provision: Article 5:1

Issue raised in MTN.GNG/NG8/W/11

52. It has been noted by one participant that in some cases anti-dumping duty investigations have been initiated in the absence of sufficient evidence justifying the opening of an investigation and that it is therefore necessary to clarify the meaning of the term "sufficient evidence" in order to avoid abuse of anti-dumping duty investigations (MTN.GNG/NG8/W/11, p.3).

Earlier discussion

53. Questions regarding the evidence required for the opening of anti-dumping duty investigations have been raised in the Committee on many occasions (e.g. ADP/M/3, paragraphs 28 and 46, ADP/M/6, paragraph 19, ADM/M/18, paragraphs 8 and 19). While the Ad-Hoc Group has not examined the specific issue of what is to be understood by "sufficient evidence", the question of the provision of information on the allegations contained in a petition is dealt with in the Recommendation Concerning Transparency of Anti-Dumping Procedures (ADP/17) which is reproduced in Annex II to this note.

III.4 Determinations made on the basis of best information available

Relevant provision: Article 6:8

Issue raised in MTN.GNG/NG8/W/3

54. One participant has noted that this provision is sometimes used when exporter's replies are late or incomplete even in limited ways. This participant has proposed that there be an amendment to Article 6:8 with a view to avoiding an arbitrary and punitive use of this provision in such situations (MTN.GNG/NG8/W/3, p.4).

Earlier discussion

55. Discussions in the Committee and in the Ad-Hoc Group have led to the adoption of two Recommendations which are relevant to this issue. At its meeting of 15 November 1983 the Committee adopted a Recommendation Concerning the Time Limits given to Respondents to Anti-Dumping Questionnaires (ADP/19). In May 1984 the Committee adopted a Recommendation Concerning Best Information Available in Terms of Article 6:8 (ADP/21). In relation to this latter Recommendation the Chairman made the following statement:

"The adoption of this recommendation is without prejudice to the position of any Party with respect to the structure or form of information submitted to the investigating authority. These issues would be considered by the Ad-Hoc Group in the context of its work on recommendations concerning the scope of the anti-dumping questionnaire" (ADP/M/12, paragraph 12).

The text of the two Recommendations is reproduced in Annexes III and IV.

IV. PRICE UNDERTAKINGS

IV.1 Criteria for the acceptance or refusal of offers of price undertakings

Relevant provisions: Article 7:2 and 7:4

Issues raised in MTN.GNG/NG8/W/3, 10 and 11

56. Some participants have suggested that under the existing provisions of the Code, authorities of the importing countries enjoy too much discretion in the acceptance or refusal of offers of price undertakings and these participants therefore propose that negotiations should establish certain criteria in this regard (MTN.GNG/NG8/W/3, p.5, MTN.GNG/NG8/W/10, p.9, MTN.GNG/NG8/W/11, p.3).

Earlier discussions

57. On many occasions the Committee has discussed aspects of the use of price undertakings as a means to terminate or suspend anti-dumping investigations. Issues raised in these discussions concern the conditions for the acceptance of offers of price undertakings, the issue of the limitation of the period of time during which undertakings can be offered, the contents and duration of undertakings, the use of price undertakings as "constructive remedies" within the meaning of Article 13, procedures for the revision or termination of undertakings and the substitution of anti-dumping duties for price undertakings. Some references to these discussions are indicated below.

ADP/M/3	paragraph 30-31	Legislation of the United States
	paragraph 59	Legislation of Canada
ADP/M/6	paragraphs 18-19	Semi-annual report of the EEC
ADP/M/7	paragraphs 24-27	Report on anti-dumping action by the EEC
ADP/M/9	paragraphs 55-56	Report on anti-dumping action by the EEC
ADP/M/15	paragraphs 15-16	Legislation of Canada
	and 21, 26-28	
	paragraphs 40-42	Legislation of the United States
ADP/M/16	paragraphs 9	Legislation of Austria
ADP/M/17	paragraphs 27-30	Legislation of Austria

58. At the meeting of the Committee held in October 1982, a request was made for the secretariat to prepare a factual note on provisions on price undertakings in national anti-dumping laws and/or regulations of Parties to the Code. This note was circulated in December 1982 as ADP/W/47.

59. The Ad-Hoc Group on the Implementation of the Anti-Dumping Code has been discussing for some time Working Papers dealing with various aspects of price undertakings in anti-dumping investigations. While no separate paper has been submitted to the Group specifically dealing with the issue of the discretion to accept or refuse offers of price undertakings, the Working Papers which have been submitted contain some elements relevant to this issue (see e.g. paragraphs 1 and 2 of ADP/W/138/Rev.1).

IV.2 Revision and/or termination of price undertakings

Relevant provisions: Article 7:2 and 7:4

Issues raised in MTN.GNG/NG8/W/15

60. One participant has suggested that a number of issues which are under consideration in the Ad-Hoc Group should also be examined in the negotiations. One of the issues referred to is the question of the criteria and procedures for the revision and termination of price undertakings (MTN.GNG/NG8/W/15, p.5).

Earlier discussions

61. The Ad-Hoc Group is currently discussing a Working Paper on the revision of price undertakings (ADP/W/139/Rev.1) and a Working Paper on the termination of price undertakings (ADP/W/140).

IV.3 Price undertakings in anti-dumping proceedings involving imports from developing countries

Relevant provisions: Articles 7 and 13

Issue raised in MTN.GNG/NG8/W/15

62. Among the issues which have been examined by the Ad-Hoc Group and which have been proposed for negotiation by one participant is the question of price undertakings from exporters from developing countries (MTN.GNG/NG8/W/15, p.6).

Earlier discussions

63. The Ad-Hoc Group is presently examining a Working Paper on the issue of price undertakings from exporters from developing countries (ADP/W/138/Rev.1).

V. IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

V.1 Application of anti-dumping duties on finished products to imports of parts of such finished products; application of existing anti-dumping duties to newly developed products

Relevant provision: Article 8

Issues raised in MTN.GNG/NG8/W/3, 10 and 11

64. One participant has raised the question of the treatment of parts and components as an issue relating to the definition of the term "like product" and has argued that as components and parts are not like the finished product, they should only be included in an investigation of the finished products if there exists specific evidence of dumping and injury with respect to such parts and components (MTN.GNG/NG8/W/3, p.2; MTN.GNG/NG8/W/10, p.3). Another participant has noted that some Parties are contemplating the adoption of measures to avoid the "circumvention" of existing anti-dumping duties on finished products through importation and assembly in the importing country of parts and components of such products. This participant has expressed the view that, as the Code does not address this issue, the Group should examine it (MTN.GNG/NG8/W/11, p.4). In addition, attention has been drawn to a proposal currently under consideration in one country for the inclusion of newly-developed products in the scope of an existing anti-dumping duty (MTN.GNG/NG8/W/11, p.4).

Earlier discussions

65. Paragraph 10 of this note contains some references to discussions in the Committee on the issue of the treatment of parts and components of finished products in the context of the definition of the scope of an investigation or in the context of the definition of the scope of application of existing anti-dumping duties. The issue of the inclusion of newly-developed products in the scope of application of an existing anti-dumping duty has been discussed on some occasions in the Committee in relation to specific anti-dumping actions (e.g. ADP/M/5, paragraphs 16 and 17). No Working Papers have been submitted to the Ad-Hoc Group on these issues.

V.2 Criteria for the refund of excessive anti-dumping duties

Relevant provision: Article 8:3

Issue raised in MTN.GNG/NG8/W/11

66. One participant has referred to the practice of one Party whereby, for the purpose of calculating margins of dumping in refund procedures involving reconstructed export prices, the payment of an anti-dumping duty is regarded as a cost incurred between importation and re-sale to the first independent buyer; under this method the anti-dumping duty is deducted from the re-sale price to determine the export price. This participant has argued that under this approach no refund takes place even if the re-sale price to the first independent buyer has been increased by an amount equivalent to the anti-dumping duty and has proposed that the Group examine the appropriateness of the treatment of the payment of an anti-dumping duty as a cost incurred between importation and re-sale (MTN.GNG/NG8/W/11, p.3).

Earlier discussions

67. The issue described in the preceding paragraph has been discussed by the Committee at its most recent meeting held in October 1987.

VI. DURATION, REVIEW AND TERMINATION OF ANTI-DUMPING MEASURES

VI.1 Time-limit to the duration of anti-dumping measures

Relevant provision: Article 9

Issues raised in MTN.GNG/NG8/W/3, 10, 11 and 15

68. Three participants have proposed that the Group examine the possibility to introduce a "sunset" clause which would limit the period of time during which anti-dumping measures may remain in force (MTN.GNG/NG8/W/3, p.5; MTN.GNG/NG8/W/10, p.10; MTN.GNG/NG8/W/11, p.4; MTN.GNG/NG8/W/15, p.4).

Earlier discussions

69. Questions relating to the duration of anti-dumping measures and the procedures for the review of such measures have been raised in the Committee on many occasions, in particular in the context of the Committee's examination of anti-dumping laws and/or regulations. At the meeting of the Committee held in October 1985, the secretariat was requested to prepare a note on "sunset" clauses and review procedures in the laws and regulations of Parties to the Code; this note has been circulated as ADP/W/106. At the meeting held in October 1986 the Committee agreed that semi-annual reports on anti-dumping actions should include information on review procedures (ADP/M/18, paragraph 91). The Working Papers on price undertakings which are presently being examined in the Ad Hoc Group include proposals on the procedures for the review and termination of price undertakings.

VI.2 Review of anti-dumping measures within a certain period of time

Relevant provision: Article 9

Issues raised in MTN.GNG/NG8/W/3 and 15

70. Some participants have suggested that there should be an obligation for Parties applying anti-dumping measures to review these measures after a certain period of time has lapsed (MTN.GNG/NG8/W/3, p.5; MTN.GNG/NG8/W/15, p.4).

Earlier discussions

71. See paragraph 69.

VII. ANTI-DUMPING ACTION ON BEHALF OF A THIRD COUNTRY

Relevant provision: Article 12

Issue raised

72. It has been proposed that the Group review the effectiveness of the provisions in Article 12 on anti-dumping action on behalf of a third country (MTN.GNG/NG8/4, paragraph 8).

Earlier discussions

73. This particular issue has not been discussed in the Committee and it has not been the subject of any discussion in the Ad Hoc Group.

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/25

31 October 1985

Special Distribution

Committee on Anti-Dumping Practices

RECOMMENDATION CONCERNING DETERMINATION OF
THREAT OF MATERIAL INJURY

1. Article VI:6 of the General Agreement provides that no contracting party shall levy any anti-dumping duty on the importation of any product of the territory of another contracting party unless it determines that the effect of dumping is such as to 'threaten material injury to an established domestic industry'. Thus, the GATT recognizes that there are certain limited circumstances in which anti-dumping action is justified even before injury has actually materialized, as well as the danger of taking an anti-dumping action too easily and without sufficient evidence of injury or threat of injury. Nevertheless Article VI:1 recognizes that dumping is to be condemned if it threatens material injury to an established industry in the territory of a contracting party.

2. However, Article 3:6 of the Anti-Dumping Code cautions that "a determination of threat of injury shall be based on facts and not merely on allegation, conjecture, or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent." One example given is when there is a convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.

3. The change in circumstances of which Article 3:6 speaks may also occur during an anti-dumping investigation. Even where the basis for the initiation of an anti-dumping investigation was sufficient evidence of threat of material injury (as well as dumping and causal link), actual material injury may have occurred by the end of the investigation, when the final determination concerning injury is made.

4. On the other hand the change in circumstances during an anti-dumping investigation may also lead to a situation of neither threat of injury nor material injury.

5. It is important to domestic producers that anti-dumping procedures and anti-dumping relief be available in cases where dumping and threat of material injury are present but before injury has actually materialized, as Article VI of the General Agreement recognizes. However, as the Anti-Dumping Code provides, anti-dumping relief based on the threat of injury must be confined to those cases where the conditions of trade clearly indicate that material injury will occur imminently if demonstrable trends in trade adverse to domestic industry continue, or if clearly foreseeable adverse events occur.

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6. Thus, for a determination of threat of injury to be made consistent with Article 3:6, the predicted future injury must be "clearly foreseen", and must also be "imminent". In addition dumping must have taken place.

7. As any prediction of future injury is based on a forecast of likely effects in the marketplace, an examination of whether future injury is "clearly foreseen" must focus on the reasonableness and reliability of different forecasts.

8. Moreover no matter how reliable a forecast of future injury might be, the time when that injury will actually materialize may be too remote to merit the taking of anti-dumping action. The determination of whether future injury is "imminent" in this context must depend on the facts and commercial realities in each case.

9. In making a determination regarding threat of material injury, with due regard to Article 3 of the Anti-Dumping Code, the administering authority should consider inter alia such factors as:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importations thereof;
- sufficient freely disposable capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing country's market taking into account the availability of other export markets to absorb any additional exports;
- whether exports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further exports; and
- inventories in the importing country of the product being investigated.

It is understood that no one of these factors by itself can necessarily give decisive guidance but that the totality of factors considered must lead to the conclusion that further dumped exports are imminent and that unless protective action is taken, material injury would occur.

ANNEX II

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED

ADP/17
29 November 1983

Special Distribution

Committee on Anti-Dumping Practices

RECOMMENDATION CONCERNING
TRANSPARENCY OF ANTI-DUMPING PROCEEDINGS

Adopted by the Committee on 15 November 1983

I. Information about the complaint

1. The Committee recognizes that the right of parties to defend their interests during the course of an anti-dumping investigation can only be guaranteed if they also have the right to see all the information that is relevant to their case providing that it is not confidential.¹ As the importers and exporters involved can defend their interests only if they know the full extent of the allegations being made against them, it is essential that they have access to the complete text of the complaint and not a summary or expurgated version, due regard being paid to the requirement for the protection of confidential information.
2. The Committee considers that for the sake of transparency in anti-dumping proceedings, when a written communication is sent by the investigating authorities to private persons or firms within the territory of the exporting country, a copy shall be made available, on request, at the same time to the authorities of the exporting country.²
3. The Committee is aware of the fact that, at the initial stage, the complaint consists of unverified allegations which may turn out not to be true or may not contain sufficient evidence to justify an investigation; the complaint should not therefore be made public before a decision whether to open an investigation has been made.³

¹ Parties to the Anti-Dumping Code are aware that in the territory of certain Parties disclosure of confidential information pursuant to a narrowly drawn protective order may be required.

² It being clearly understood that the authorities of the exporting country may request and the investigating authorities would agree that in cases where the authorities of the exporting country so desire, any written communications essential to the proceedings should be provided to the government of the exporting country, due regard being paid to the requirement of protection of confidential information.

³ Parties to the Anti-Dumping Code are aware that for certain parties public information laws limit the ability of the government to deny specific requests from a member of the public for non-confidential information. These parties will not, however, encourage such request.

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4. For these reasons the Committee recommends to the Parties:

- (a) to provide the full text of the complaint to the exporters⁴ and to make it available, on request, to the importers involved as soon as a decision has been made to open an investigation, due regard being paid to the requirement for the protection of confidential information;
- (b) to provide the authorities of the exporting country with the full text of the complaint as soon as the decision has been made to open an investigation, due regard being paid to the requirement for the protection of confidential information;
- (c) to require, in cases where confidential information is provided in the complaint, a non-confidential summary of such information in the non-confidential copy;
- (d) to confine to extremely exceptional cases the possibility of not providing a summary of confidential information and in such cases to fully explain the reasons therefor;
- (e) to avoid, unless a decision has been made to open an investigation, any publicizing of the complaint or its release.³

II. Publication and reasons for decisions taken under an anti-dumping investigation

5. The Committee recognizes that in order to ensure that anti-dumping investigations are conducted on a fair and equitable basis, and to enable parties to consider the possibility of legal recourse, it is essential that any decision taken by the investigating authority should be published together with the reasons which led to it. Publication shall be obligatory at the time of the initiation of an investigation, the application of provisional measures and the conclusion of the investigation (by the imposition of definitive duties, the acceptance of price undertakings or a negative finding).

6. Taking into account the relevant provisions of the Anti-Dumping Code the Committee recommends:

- (a) a notice initiating an anti-dumping investigation published in accordance with Article 6:6 shall contain adequate information on the following:
 - (i) the name of the exporting country and the product involved;
 - (ii) the date of initiation of investigation;

⁴ It being understood that, where the number of exporters involved is particularly high, the full text of the complaint should instead be provided only to the authorities of the exporting country or to the relevant trade association who then should forward copies to the exporters concerned.

- (iii) the basis on which dumping is alleged in the complaint;
 - (iv) a summary of the factors which have led to the allegation of injury;
 - (v) the address to which representations by interested parties should be directed;
 - (vi) the time-limits allowed to interested parties for making their views known.
- (b) a notice on the imposition of provisional measures published in accordance with Article 8:5 shall set forth adequate reasons for the preliminary findings on dumping and injury (insofar as there is no separate preliminary injury determination and a notice thereof) and shall refer to the matters of fact and law which have led to arguments being accepted or rejected, due regard being paid to the requirement for the protection of confidential information, and in particular
- (i) the names of the suppliers or when this is impracticable, the supplying countries involved;
 - (ii) description of the product, which is sufficient for customs purposes;
 - (iii) the margins of dumping established and the basis on which the dumping calculations have been made;
 - (iv) factors which have led to the injury determination including information on factors other than dumping which have been taken into account when the injury determination is made insofar as there is no separate notice concerning such injury determination and including such information;
 - (v) main reasons leading to the determination;
- (c) a notice of suspension or conclusion of investigation in the case of a positive determination involving the imposition of a definitive duty or a price undertaking shall contain all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information, and in particular:
- (i) the names of the suppliers or when this is impracticable, the supplying countries involved;
 - (ii) description of the product, which is sufficient for customs purposes;
 - (iii) the margins of dumping established and the basis on which the dumping calculations have been made;

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- (iv) factors which have led to the injury determination including information on factors other than dumping which have been taken into account when the injury determination is made insofar as there is no separate notice concerning such injury determination and including such information;
 - (v) main reasons leading to the determination;
 - (vi) reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers.
- (d) a notice of termination of an investigation in the case of a negative determination should be adequately detailed and decisions should set forth the factual basis for the determinations as well as the basis for the resolution of factual and legal issues raised during the investigation.

ANNEX III

RESTRICTED

ADP/19
29 November 1983
Special Distribution

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

Committee on Anti-Dumping Practices

RECOMMENDATION CONCERNING THE TIME-LIMITS
GIVEN TO RESPONDENTS TO ANTI-DUMPING QUESTIONNAIRES

Adopted by the Committee on 15 November 1983

I

The Committee considers that in setting the time-limits for respondents to an anti-dumping questionnaire it is necessary to strike a balance between the needs of the investigating authorities on the one hand and the firms subject to the investigation on the other. Consequently, a time-limit must meet the twin goals of (a) alleviating the burden of the firms and (b) providing accurate information to the authorities in as short a period as possible. In addition, such factors as the complexity of the case and/or of the questionnaire itself should be taken into account in setting time-limits in specific cases.

II

In the light of the foregoing the Committee recommends that:

- respondents to an anti-dumping questionnaire should normally be given at least thirty days for the reply,
- as a general rule the time-limit for exporters should be counted from the date of the receipt of the questionnaire which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting country;
- due consideration should be given to any request for an extension of the thirty day period and, upon cause shown, such an extension should be granted whenever possible.

ANNEX IVRESTRICTED

ADP/21

6 June 1984

Special Distribution

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**Committee on Anti-Dumping PracticesRECOMMENDATION CONCERNING
BEST INFORMATION AVAILABLE IN TERMS OF ARTICLE 6:8Adopted by the Committee on 8 May 1984

I

The authorities of the importing country have a right and an obligation to make decisions on the basis of the best information available during the investigation from whatever source, even where evidence has been supplied by the interested party. The Anti-Dumping Code recognizes the right of the importing country to base findings on the facts available when any interested party refuses access to or does not provide the necessary information within a reasonable period, or significantly impedes the investigation (Article 6:8). However, all reasonable steps should be taken by the authorities of the importing countries to avoid the use of information from unreliable sources.

II

For these reasons the Committee recommends that:

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any directly interested party, and the way in which that information should be structured by the interested party in its response. The investigating authorities should also ensure that the party is aware that if information is not supplied within a reasonable time span, the investigating authorities will be free to make decisions on the basis of the facts available, including those contained in the complaint by the domestic industry.
2. The investigating authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the investigating authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The investigating authority should not maintain a request for response in a particular medium or computer language, and the response need not be given in that particular medium or computer language, if the interested party does not maintain computerized accounts or if presenting the response in a particular medium or computer language would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

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3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the investigating authorities, should be taken into account when findings are made. If a party does not respond in the preferred medium or computer language because of the circumstances set out in paragraph 2, this should not be considered to significantly impede the investigation.

4. Where the investigating authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape) the information should be supplied in the form of written material or any other form acceptable to the investigating authorities.

5. Even though the information provided may not be ideal in all respects this factor, in itself, should not justify the investigating authorities from disregarding it since the interested party may have acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the investigating authorities as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the investigating authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the complaint, they should do so with special circumspection. In such cases, the authorities should check the reasonableness of the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not co-operate and thus relevant information is being withheld from the investigating authorities this situation could lead to a result which is less favourable to the party than if the party did co-operate.