GENERAL AGREEMENT ON TARIFFS AND TRADE

CONTRACTING PARTIES
Twelfth Session

ANTI-DUMPING AND COUNTERVAILING DUTIES

Secretariat Analysis of Legislation

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2. Norwegian Memorandum: 144
3. United Kingdom legislation: 148
4. Indian Memorandum: 156
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References to Relevant GATT Provisions and Documents

Art. VI of GATT and Interpretive Notes: BISD Vol. I
Art. VI of GATT (Revised) and Related Notes: BISD Vol. I (Revised)
Review Report 1955 on the changes proposed to Article VI (BISD, 3rd. Suppl.p.222)
Report by Panel on Swedish anti-dumping Duties (BISD, 3rd. Suppl.p.81)

References to Relevant League of Nations Documents

Memorandum on Dumping by Jacob Viner, C.E.C.P. 36, 1926

Memorandum on the Legislation of different States for the Prevention of Dumping by Mr. Trendelenburg, C.E. 7, 1927.
GENERAL SECTION

Introduction

As a consequence of a Norwegian suggestion (L/409), the CONTRACTING PARTIES requested the secretariat of GATT at the Tenth Session (SR.10/17), to collect extracts from legislation and administrative regulations providing for the levy of anti-dumping, and countervailing duties and other supplementary duties and charges intended to protect domestic production against the competition of low-priced imports. This request led to the submission and distribution of the various laws and regulations in force (document L/479 and Addenda).

At the Eleventh Session the CONTRACTING PARTIES considered, however, that a more systematic study would be necessary before arriving at conclusions and therefore asked the secretariat (SR.11/8), to prepare an analysis of the information received, with the assistance of experts made available by the contracting parties concerned.

Before commencing this study, the secretariat considered whether it should be extended to the legislation of all contracting parties which had submitted extracts from their legislation. After examining the situation in various countries which had made no use of their legislation to counteract dumped or subsidized importation, it appeared that the practical value of the comparative study would have been considerably reduced if it were extended to the legislation of such countries which, except in the case of Norway and the United Kingdom, only consists of a general power granted by the government to a special body. In Norway, where the government has made no practical use of the power to levy anti-dumping and countervailing duties provided for in the legislation, the situation is described in the annexed memorandum. (Legislation Annex 1, page 141, and Memorandum Annex 2, page 14.) The situation in the United Kingdom (Annex 3, page 14) is the following: the Board of Trade takes action, if industries which consider themselves adversely affected make application. If after examination, the Board of Trade were convinced of the necessity of action, a relevant order would be prepared which would have to be confirmed by an affirmative resolution of the House of Commons; no such order has yet been made.

The following countries are therefore not included in this analysis:

<table>
<thead>
<tr>
<th>Country</th>
<th>Legislation published in document L/479</th>
<th>Nature and date of Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>L/479/Addendum 3</td>
<td>5.9.24 (Tariff Act 1924 as amended in 1954)</td>
</tr>
<tr>
<td>France</td>
<td>&quot; 10</td>
<td>Old legislation (Customs Law)</td>
</tr>
<tr>
<td>Finland</td>
<td>&quot; 4</td>
<td>8.9.39 (Customs Law 1939)</td>
</tr>
<tr>
<td>Germany</td>
<td>&quot; 8</td>
<td>16.8.51 (Tariff Law 1951)</td>
</tr>
<tr>
<td>Country</td>
<td>Legislation published in document L/479</td>
<td>Nature and date of Legislation</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------</td>
<td>-------------------------------------------------------------------</td>
</tr>
<tr>
<td>India</td>
<td>L/479/Addendum 2¹</td>
<td>Tariff Act 1934 and Tariff Commission Act 1951</td>
</tr>
<tr>
<td>Italy</td>
<td>&quot; 4</td>
<td>Old tariff legislation</td>
</tr>
<tr>
<td>Japan</td>
<td>&quot; 3</td>
<td>Customs Tariff Law 1910</td>
</tr>
<tr>
<td>Norway</td>
<td>Annex 1 (page 141)</td>
<td>Customs Tariff Act and Customs Administration Law as amended 1.12.54.</td>
</tr>
<tr>
<td>Pakistan</td>
<td>L/479/Addendum 16</td>
<td>Tariff Act 1934 and Protective Duties Act 1950</td>
</tr>
<tr>
<td>Turkey</td>
<td>&quot; 15</td>
<td>Customs Code 1954</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Annex 3 (page 148)</td>
<td>17.4.57 Customs Duties (Dumping and Subsidies) Act 1957</td>
</tr>
</tbody>
</table>

This study comprises an extensive analysis of the situation in the countries which do make use of their anti-dumping and countervailing provisions, namely; Australia, Belgium, Canada, New Zealand, Union of South Africa, Federation of Rhodesia and Nyasaland, Sweden and the United States of America. It is interesting to note that for many years most of these countries have had, traditionally, recourse to anti-dumping charges. The study of the League of Nations of 1927 reports that relevant legislation already existed in Australia (1905), Canada (1903), New Zealand (1905), South Africa (1914) and the United States (1909).

Before entering into consultation with these countries as suggested by the CONTRACTING PARTIES, the secretariat prepared, in cooperation with some interested governments, a questionnaire so as to ensure that the information received would be made available on a comparable basis. This questionnaire, as revised during the course of the consultations has formed the basis of the analysis of the relevant legislation in the above-mentioned countries.

In the case of Belgium, Canada, New Zealand and the United States, consultations took place, while for Australia, Rhodesia & Nyasaland. Sweden and South Africa, correspondence replaced such consultations. The descriptions in the Country Section have had the full approval of the governments concerned.

This study, in effect, reverts to the problems of dumping which were taken up by the League of Nations but which resulted only in two private reports published as League of Nations documents, i.e. Jacob Viner's Memorandum on Dumping which attempts to analyse the dumping problem generally and Mr. Trendelenburg's description of legislation in force at that time in

¹See also Memorandum of the Indian Government (Annex 4, page 156)
different States. Though the action of the League of Nations did not lead to a direct result, the insertion of Article VI in GATT based on a United States suggestion, may be considered an indirect effect. In this study an attempt is made to bring out as clearly as possible the situation which now exists after provisions relating to the application of anti-dumping and countervailing duties had been incorporated, as Article VI, in the GATT.

This study is divided into two main sections. The general section (page 3) is devoted to the problems arising from the application of anti-dumping and countervailing duties while the country section (page 20) describes the situation in the individual countries to which the study extends and consists of an analysis of the situation in the individual countries along the lines of the above-mentioned questionnaire. References in the General Section refer to the number of the relevant questions in the country section.

**Anti-dumping and Countervailing Duties in GATT**

GATT approaches the problem of anti-dumping duties in a practical way. Article VI condemns injurious dumping and permits the levy of anti-dumping duties to the extent of the dumping; it describes dumping as the difference between the higher "normal value" and the lower import price, and defines only the term "normal value".

Although Article VI does not refer to Article I of GATT, namely the unconditional most-favoured-nation obligation, it is clear from the wording that a discriminatory application of anti-dumping duties is in conformity with GATT. As in all other instances where GATT provides for an exception to the obligation to grant most-favoured-nation treatment, the application of such an exception is limited in the interest of maintaining the greatest possible freedom of trade. In the case of anti-dumping duties the limitations are the following:

In the first place, the right to apply anti-dumping duties is practically limited to the so-called "price dumping"; that means to instances where the low price is the result of a manipulation directed to increase the sale by unfair price reductions. This fact becomes clear from the definition of "normal value" which is based on the commercial price in the foreign country, defined as the consumer price, or in the absence of such a price, as the export price or the cost of production. The fact that under the GATT provisions these prices are to be calculated on the basis of the situation on the foreign market, excludes the application of anti-dumping duties in instances where the general conditions in the foreign country permit lower prices, for example as a result of lower labour costs (very often wrongly called "social dumping") or better conditions of production. It is worth while noting that the definition of the "normal value" consequently excludes the calculation of the anti-dumping margin using the prices of national products of the importing country as the "normal value".

References see Index, page 2
Secondly, the levy of anti-dumping duties is only permitted if the importation of dumped products creates or threatens material injury to the national industry. Only exceptionally the interests of a third country may be protected.

Finally, there are the obligations which limit the calculation of the dumping margin in such a way as to ensure that the anti-dumping duties are not used as a means of achieving administrative protection. In this field fall the requirements to base the calculations on a comparable situation and not to add non-paid indirect taxes.

Article VI permits the levy of countervailing duties, in instances where the exported products have been subsidized, to the extent of the subsidy. But — as in the case of dumped imports — the levy of a countervailing duty is permissible only if the importation causes or threatens material injury.

In all countries to which this study extends, except in Sweden, the basic legislation is older than the General Agreement and therefore the wording is different from that of Article VI. All governments stress the point, however, that nevertheless their legislation is fundamentally similar or the same. In Sweden, on the other hand, Article VI is an integral part of the legislation which refers directly to the General Agreement without, however, repeating the provisions of the Article. The relevant provisions are included in or attached to the various analyses.

Insofar as the relations of the existing provisions with Article VI are concerned, all governments consider their application of duties to be practically in conformity with the obligations laid down in this Article, with the exceptions mentioned below. In particular the various countries stated:

<table>
<thead>
<tr>
<th>Country</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Not wider in scope.¹</td>
</tr>
<tr>
<td>Belgium</td>
<td>Wider legal power, but GATT obligations</td>
</tr>
<tr>
<td></td>
<td>respected in executive orders.</td>
</tr>
<tr>
<td>Canada</td>
<td>Narrower, except insofar as the injury</td>
</tr>
<tr>
<td></td>
<td>requirement is concerned.</td>
</tr>
<tr>
<td>New Zealand</td>
<td>The discretionary power given to the</td>
</tr>
<tr>
<td></td>
<td>Minister of Customs is used in the public</td>
</tr>
<tr>
<td></td>
<td>interest.</td>
</tr>
<tr>
<td>Rhodesia &amp; Nyasaland</td>
<td>Not wider in scope.</td>
</tr>
<tr>
<td>South Africa</td>
<td>Not wider in scope, with a few enumerated</td>
</tr>
<tr>
<td></td>
<td>exceptions.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Not wider in scope (Article VI).</td>
</tr>
<tr>
<td>United States</td>
<td>Not wider in scope, but United States anti-</td>
</tr>
<tr>
<td></td>
<td>dumping legislation refers to &quot;injury&quot;</td>
</tr>
<tr>
<td></td>
<td>instead of &quot;material injury&quot; and in the</td>
</tr>
<tr>
<td></td>
<td>countervailing legislation injury is not</td>
</tr>
<tr>
<td></td>
<td>required.</td>
</tr>
</tbody>
</table>

¹No use is made of some powers (Section 11A, p. 36).
Provisions in force in the countries concerned (Questions 1, 3 and 7)

In practice most countries do not distinguish between anti-dumping and countervailing duties and they levy a special charge (the name of which varies: dumping duties, anti-dumping duties, special duties etc.) regardless of the fact whether or not the price reduction has been achieved by dumping or by subsidization. The practical reason for this approach seems to be that a comparison with the "normal value" is possible in most instances while proof of a subsidization is often difficult. GATT, aware of these problems, permits the subsidy or bounty to be estimated, and states that no product should be subject to both anti-dumping and countervailing duties (paragraphs 3 and 5 of Article VI).

The question what measures should be considered as involving subsidization is frequently difficult to resolve, for example if the raw material used in the production of the exported goods is of domestic origin and a duty is levied on the export of such materials. Another difficulty arises when the subsidy is not paid on the finished product but on one of its components.

A special type of low price import may also be mentioned in this connexion, namely those which are the consequence of currency measures taken in the exporting country. While in most such instances the price comparison will not permit the levy of an anti-dumping duty, GATT expressly permits the levy of countervailing duties in circumstances where the exportation of the product is facilitated by a multiple currency system (Note to Article VI). A case in which such a provision has been applied is the imposition of a countervailing duty by the United States on imports of wool tops from Uruguay.

Of the countries to which this study extends, the following is the situation as regards the application of anti-dumping and countervailing duties:

Australia - Does not distinguish between anti-dumping and countervailing duties. The freight dumping duty however, corresponds to a countervailing duty in the terminology of GATT.

Belgium - The special duties levied on imports from State-trading countries are considered to be countervailing duties.

Canada - Does not distinguish between anti-dumping and countervailing duties. The special provision, introduced in 1955, permitting the levy of additional duties on subsidized products has never been used.

New Zealand - Does not distinguish between anti-dumping and countervailing duties. Some provisions, however, are directed only against subsidized imports.

Rhodesia and Nyasaland - Does not distinguish between anti-dumping and countervailing duties. The bounty, freight, exchange and surcharge dumping duties, however, correspond to countervailing duties in the terminology of GATT.
South Africa

Does not distinguish between anti-dumping and countervailing duties. Some provisions, however, are directed only against subsidized imports.

Sweden

Based on the GATT provisions, distinguishes between countervailing and anti-dumping duties.

United States

Is the only country which has different legislation for anti-dumping and countervailing duties.

Relation of anti-dumping and similar Duties with other Provisions of national Legislation

The anti-dumping duties are very often closely linked with other provisions of national legislation. The most interesting case is the link with the customs valuation provisions, such as exists typically in the Canadian legislation where any increase of the foreign domestic value by the customs authorities in the process of assessing value for ordinary purposes leads normally to the levy of an anti-dumping duty if the product in question is of a class or kind produced in Canada. This system automatically deals with such short term situations as imports at end-of-season prices.

Not only in Canada, but also in the United States, the provisions for fixing the "normal value" for dumping purposes and for ordinary customs purposes are closely related (Question 15). It seems that the closer the anti-dumping provisions are linked with the provisions for assessing the value of products for ordinary customs purposes, the easier it is to apply anti-dumping duties. On the other hand, a country, such as Sweden, which has a mainly specific tariff encounters difficulties in applying anti-dumping duties (Question 6).

There have been suggestions to apply quantitative restrictions instead of or in addition to anti-dumping duties on dumped or subsidized imports. A proposal that such restrictions should be permitted under GATT brought forward by the delegation of New Zealand at the Review Session in 1954/55 (3rd Suppl. of BISD, page 223), was rejected, as contrary to the basic principle of GATT to remove quantitative restrictions. Such a replacement of anti-dumping duties and similar charges has, however, to be distinguished from the system applied by Belgium where "special charges" are levied in connexion with the issuing of licences.

The anti-dumping and similar provisions in some instances resemble the Escape Clause provisions of Article XIX of GATT insofar as the motives for the application of anti-dumping duties, namely, danger to the national industry, etc. or the immediate prospect of such danger are defined in terms used in that Article.

\textsuperscript{3}Canada has a special Agreement with Japan concerning the assessment of value.
There is, however, no relation of the anti-dumping provisions to Article XIX since this Article permits the general increase of a bound duty rate in exceptional circumstances, while the anti-dumping duty provisions of Article VI deal, regardless of the motives and the urgency, with the levy of discriminatory charges on individual dumped imports.

The type of ordinary customs duties applied by a country has an indirect effect on the anti-dumping provisions. An automatic anti-dumping effect is inherent in a specific duty since the product will, after importation, cost at least the duty paid, even in cases where it could be imported at a negligible price. An ad valorem duty, on the other hand, becomes less effective with decreasing price since even a 100 per cent duty on a product imported at a negligible price will be practically nil. The recent change of the customs tariffs in many countries from specific to ad valorem duties may therefore be a reason for the present trend towards a more extensive application of anti-dumping and similar duties.

The Importance of Anti-dumping and Similar Duties (Questions 4 and 5)

Australia, New Zealand, Sweden and the United States have thus far applied anti-dumping and similar duties only in instances of commercial (price) dumping. It seems that these States could apply their provisions to imports from State-trading countries: a fact which is stated by some of them. Canada, Rhodesia and Nyasaland and South Africa have imposed anti-dumping duties also on (dumped) imports from State-trading countries (question 4).

Concerning countervailing duties, the United States has indicated that these are used to offset all types of export subsidization, including subsidization through differential exchange rates. In Canada, countervailing duties are not used to counteract the use of multiple rates of exchange.

It is very difficult to find the means to measure the importance of anti-dumping and similar duties within the national economy of the importing country. Any attempt to express such duties as fractions of the revenue collected from ordinary customs duties would be without value, due to the fact that when it is known that anti-dumping duties will be imposed, dumped imports and the revenue from such duties decreases. In many instances, the possibility of the application of anti-dumping duties may even stop dumping or subsidization before such duties are actually imposed.

The secretariat enquiry was therefore limited to the number of instances in which anti-dumping and countervailing provisions have been applied (question 5). It appears that the application of the various provisions has relatively seldom led to the levy of anti-dumping or similar duties. The following table shows the number of products affected and the number of rejected requests. This table does not contain figures for Canada and New Zealand, since in those countries the customs authorities can take action without decree and therefore an enumeration comparable with that given by the other countries is impossible. New Zealand, however, attached a reply to this question with certain indications of the type of products affected.

1For details see Country Section, (question 5).
### Items Affected by Anti-Dumping Decrees in force

<table>
<thead>
<tr>
<th>Country</th>
<th>Items Affected</th>
<th>Number of Rejected Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>9</td>
<td>101</td>
</tr>
<tr>
<td>Federation of Rhodesia and Nyasaland</td>
<td>3 plus 7 special duties</td>
<td></td>
</tr>
<tr>
<td>Union of South Africa</td>
<td>22 plus 7 special duties</td>
<td>211</td>
</tr>
<tr>
<td>Sweden</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>United States of America</td>
<td>2</td>
<td>96</td>
</tr>
</tbody>
</table>

### Items Affected by Countervailing Duties in force

<table>
<thead>
<tr>
<th>Country</th>
<th>Items Affected</th>
<th>Number of Rejected Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>3 (one item includes several textile products)</td>
<td>10</td>
</tr>
<tr>
<td>South Africa</td>
<td>2 (one item includes several metal products)</td>
<td>3</td>
</tr>
<tr>
<td>United States of America</td>
<td>12</td>
<td>62</td>
</tr>
</tbody>
</table>

### The State-Trading Problem

A special problem in the application of anti-dumping and countervailing duties is created by the fact that two types of economy exist. One is the economy based on the cost of production (in the following called free-trade economy) and the other is the State-trading economy in which the prices within the national economy are determined on other bases than the cost of production. This makes the application of the GATT anti-dumping provisions, which are by definition based on the price of the product, difficult in the case of State-trading countries. Czechoslovakia asked the secretariat in preparing its Analysis to pay special attention to this problem (Annex 5, page 158).

Prices on the home market of State-trading countries may in one instance be higher than the price of the same product would be in a free-trade country a situation which could lead to the levy of anti-dumping duties even in circumstances which economically are not dumping. On the other hand, extremely low prices in a State-trading country could exclude the levy of anti-dumping duties. A note to the revised Article VI refers to that problem and states that a strict comparison in such cases may not always be appropriate. In practice, countries levying anti-dumping or countervailing duties on imports from State-trading economies very often rely on the price situation in comparable third markets or on consultations with the exporting country. Canada in its relations with certain State-trading countries has had recourse to special bilateral agreements.
It is interesting to note that Belgium does not consider imports from State-trading countries under the aspect of dumping but applies in given circumstances countervailing duties considering under-priced imports from such countries as being subsidized. But Belgium also measures the extent of the "subsidy" by a price comparison as in the case of anti-dumping duties.

Calculation of the "Normal Value" for measuring the dumping Margin (Questions 3-11)

GATT permits the calculation of "normal value" on the basis of the consumer price, the export price (to third countries), or on the cost of production in the exporting country.

The replies to the relevant question (see table below) show that all countries normally base the calculation on "normal value" on the foreign consumer price, with the exception of Sweden and the United States which also use the export price to third countries as a basis for calculating the normal value.

<table>
<thead>
<tr>
<th>Basis of &quot;Normal Value&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Foreign consumer price (a)</td>
</tr>
<tr>
<td>Export price (b)</td>
</tr>
<tr>
<td>Production costs (c)</td>
</tr>
</tbody>
</table>

Article VI takes account of differences affecting price comparability, mainly those based on terms of sale and taxation. Apart from the Swedish provision which refers to GATT, the provisions of the other countries are difficult to compare with the wording used in GATT. There is, however, a clear tendency to arrive at a normal value which is really a comparable value. In Australia (Question 10) prices to domestic wholesalers are normally used as a basis for calculation.

It emerges from the replies that normally all contracting parties in question base the calculation of the normal value on the price of the "same product from the same producer". The other possibilities, namely to base the normal value on a similar product, on products of other producers, on average prices or on prices in third countries, are used only occasionally. Reference has already been made to the fact that in the case of State-trading countries the normal value - due to the lack of comparable figures - is sometimes calculated on the basis of prices in third countries having a comparable economic structure.
The Question of Injury (questions 12, 18 and 26)

The GATT provisions, based on the principle of reducing obstacles to trade, requires that a country should have recourse to an anti-dumping or countervailing duty only in instances where the import of the product "causes or threatens material injury to an established industry... or materially retards the establishment of a domestic industry".

The application of this requirement by the various countries shows that there are considerable differences in the interpretation of this rule. No country (except Sweden which directly refers to the GATT provisions) uses the term "material injury". Australia speaks of "detriment" to the industry. Rhodesia and South Africa, while requiring detriment to an industry, furthermore limit any action in the field of anti-dumping and similar duties to instances of public interest. The United States, so far as anti-dumping duties are concerned, have no general rule but investigations by the Tariff Commission are meant to bring out, in the case of dumping, the injury (not the "material" injury) caused by the imported product to the domestic industry. In the case of countervailing duties, however, the United States do not require an injury caused by the subsidized import.

An interesting fact is that all countries, which preselect the products on which the customs authorities levy anti-dumping and similar duties, concentrate the considerations concerning the injury at the preselection stage, thus freeing the customs authorities from such considerations.

The application of the material injury clause may create certain administrative difficulties in countries which have no preselection. In the case of Canada the assessment of anti-dumping duties is limited to goods of a "class or kind" made in Canada, apparently on the assumption that any product which is subsidized or imported under anti-dumping conditions and which compete with a domestic product causes or threatens an injury to the Canadian producer. The selection of products treated as Canadian products is controlled by a special procedure and only products are considered to be of a Canadian class or kind which are produced to an extent satisfying at least 10 per cent of the usual Canadian consumption. In New Zealand action of the Ministers is limited in a similar way although the provisions are less formal than in Canada.

A more specific problem is the question whether the term "industry" is to be understood to include the whole national industry or only a part of it. A case where the importation of a product would create a danger for the whole

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1 However, the GATT provides the possibility of applying, subject to approval, anti-dumping and countervailing duties in the interest of third countries. Thus far no contracting party has had recourse to these provisions, but Australia (Article 12, Appendix 2: page 30) and New Zealand (Section B, Question 14, page 68) have provisions to that effect.

2 See page 13
national industry is difficult to imagine. Most countries, in fact, seem to take into consideration only the effect which the import has on the relevant branch of industry. In the United States, even in one case it was decided clearly that the term "industry" has to be interpreted in the sense of the "segment" of the relevant industry.

Levy of anti-dumping and similar Duties on Products originating fully or partially in other than the exporting Country (Question 13)

All countries are in conformity with the ideas expressed in the Review Session in 1954/55 (BISD, 3rd Supp., p.223, para.5), namely that in the case of transhipped products the price comparison is to be made with the situation in the country of origin. When, on the other hand, a product of a third country (country of origin) has been absorbed by the economy of the exporting country, the necessary price comparisons seem to be made in most instances with the situation in the exporting country, although the above-mentioned Review Report does not exclude a comparison with the situation in the country of origin.

Australia and Rhodesia, however, state clearly that no provision exists concerning products which have been transformed in the exporting country.

Selection of Products (Question 16)

Mr. Viner states in the Report of 1926 (page 16) that decisions concerning the application of anti-dumping and similar duties should not be left to the discretion of a customs officer, but should only be applied subsequent to an official notice. This recommendation tends to limit the danger inherent in administrative action.

The countries whose regulations permit action by the customs authorities only consequent to prior notice by the government are Australia, Belgium, Rhodesia, South Africa, Sweden and the United States. In all these instances provisions exist for the selection of the items on which anti-dumping and similar duties are to be levied, and also for the decision as to whether an import causes or threatens a material injury to the domestic industry. Since the customs authorities can take action only consequent to a decree, this system has, in order to simplify the language used in the questionnaire, been called "preselection". However, in the case of the countries where the customs authorities can take action without prior governmental notice, namely Canada and New Zealand, provisions also exist which ensure that the decisions are taken in the public interest.

There are, however, statements which could be differently understood. Australia states that the damage to a single producer and Sweden the damage to total relevant national production constitute material injury.
Procedure in the Preselection Stage (Questions 17, 19, 21 and 23)

All countries which have a preselection system take action whenever a complaint is brought forward by a national producer affected by imports considered to be dumped. In no country, however, does official initiative seem to be excluded and Sweden (for agricultural products), Belgium (for countervailing duties), South Africa and the United States, mention such a possibility (Question 17).

In all instances where countries have recourse to a preselection of products the injury caused or threatened is - as already mentioned - considered at that stage, with the exception of the countervailing duties of the United States where the injury factor plays no rôle.

Insofar as the burden of proof in the preselection stage is concerned Rhodesia, South Africa, Sweden and the United States state that it rests with the investigating body. Australia, however, states that the burden of proof remains with the complainant (Question 19 b). Belgium states that the proof rests with the complainant as well as with the authorities.

The investigations are carried out by high officials. Australia states that a public enquiry by the Tariff Board is initiated in cases where the investigation of the Department of Customs and Excise makes the case appear prima facie to be one of dumping. In the United States the investigations are carried out by the Treasury Department and in the case of dumping the injury is determined by the Tariff Commission. In Belgium the Department of Economic Affairs, in the case of Rhodesia a special board or person, and in the case of South Africa a statutory body (Board of Trade and Industries), is charged with the conduct of investigations (Question 19 a).

The notices, orders etc. in the countries having a preselection procedure are issued by the following Ministers (Question 19 c):

- Australia - Minister of Customs and Excise (Notice)
- Belgium - Council of Ministers (Royal Order)
- Rhodesia - Governor General with the approval of the Assembly (Notice)
- South Africa - Responsible minister (Notice)
- Sweden - King in Council (Royal Proclamation)
- United States - Secretary of Treasury (in the case of anti-dumping duties the relevant decree is called "Finding", in the case of countervailing duties "Order")
No country provides for the possibility of an appeal against such a decision the legality of which appears, however, to be controlled by the relevant institutions (High Court, etc.) as in the case of other notices and orders (Question 19 d).

In practice no country involved limits the time of validity of such a notice. In Australia notices may be limited in time, and in Belgium the decisions are regularly reviewed in order to take possible changes into account.

As for the possibility of limiting the geographical application of such a notice is concerned, Belgium, South Africa and the United States report that the notices are in all circumstances limited to imports from certain countries. The United States occasionally even limits the application to a specified exporter. The Australian and Canadian notices do not limit the application to imports from a specified country. Australia states that the notices, which in principle apply to shipments from all countries unless otherwise specified, can be limited to certain countries or shipments. Similarly, Sweden has recourse to both systems. (Question 21)

**Effect of "Normal Values" and Charges fixed in the Decree** (Questions 20 and 22)

Some countries include in their basic notice prices which are related to the dumping margin. The inclusion of such values may have two important effects. In the first place, it can facilitate the work of the customs officer by indicating that products imported at prices higher than the published value can be allowed in, eliminating for such products any further investigation. Secondly, it can limit the anti-dumping duty to the margin between the published value (if lower than "normal value" thus conforming with Article VI) and the dumped import price.

In Sweden where a value is regularly published, the publication has both effects. In Australia the inclusion of prices had, in all instances where use of this possibility was made, only the effect that more expensive goods may be imported without payment of a dumping duty. Rhodesia and South Africa have made no use of the possibility of including values in the notices. The only country which does not provide for the inclusion of values in the decree is the United States.

With the exception of Belgium, where the levy - a fixed charge independent of price - is determined by the relevant Royal Order, no country has fixed anti-dumping or countervailing duties in the decree. South Africa, however, states that such a possibility exists.

**The Assessment of anti-dumping and similar Duties** (Questions 24 – 30)

The assessment of anti-dumping duties is in all instances the obligation of the Customs Administration which follows closely the system used for the assessment of normal customs duties. Similarly appeals against decisions of the Customs Administration are governed by the normal customs procedures (Questions 24 and 28).
So far as countervailing duties are concerned the situation is the following. The Belgian countervailing charge, fixed by the Royal Order, is levied in connexion with the issuing of relevant licences. In the case of the United States countervailing duties the action of the customs authorities is limited to the collection of the duty in accordance with the determination made in the preselection stage.

All countries state that they collect through official channels, the information on which the dumping duties are assessed. The United States Government states that in addition the information gained by the Treasury in the preselection stage is made available to the Customs Administration (Question 25).

The problem of the burden of proof in the assessment stage is an important aspect due to the fact that there is a tendency to assume dumping in doubtful cases, and to leave the burden of proof that the product has not been dumped to the importer. The situation in the various countries is as follows: (Question 28 (a)):

**Burden of proof**

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>The Customs Administration acts consequent to the results of the official inquiries; in the case of a dispute the burden of proof rests with the importer.</td>
</tr>
<tr>
<td>Belgium</td>
<td>No action by the Customs Administration. The charges levied at issuing of licences are fixed in the relevant decree.</td>
</tr>
<tr>
<td>Canada</td>
<td>Customs Administration, but exporters have to verify the fair market value declared on the customs invoice when requested to do so.</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Customs Administration, but importer is afforded full opportunity to make representations.</td>
</tr>
<tr>
<td>Rhodesia</td>
<td>Controller of Customs and Excise.</td>
</tr>
<tr>
<td>South Africa</td>
<td>The Customs Administration acts consequent to the results of the official enquiries; in the case of a dispute the burden of proof rests with the importer.</td>
</tr>
<tr>
<td>Sweden</td>
<td>Accepts the assumption that dumping prevails if products are imported at a price lower than the minimum price fixed by the relevant decree. The importers have the right to show that the product involved has not been dumped.</td>
</tr>
</tbody>
</table>
Insofar as anti-dumping duties are concerned the burden of proof rests (action by the customs appraiser) with the Government, but importers have the right to make representations. In the case of countervailing duties, the amount of subsidy and their necessary determinations are made in the pre-selection stage.

All countries permit the importation of products against security. Canada does not insist upon security. All countries furthermore state that they try to reduce the delay caused by the anti-dumping procedure to a minimum. The United States, however, adds that the delay during the time between the importation and the decision may be longer in cases where a new decree is necessary (Question 29).

In countries having a pre-selection system the Customs Administration is instructed to take action as long as the relevant decree is in force; but in countries which do not have a pre-selection system and where the action of the customs administration is not limited to certain products, Canada and New Zealand, decisions taken by the administration may be applied in certain circumstances on similar imports. This possibility is limited in Canada to imports where circumstances are identical, and in New Zealand where the same products from the same exporter are imported in like circumstances (Question 27). In Canada, which has no pre-selection system and where the customs officer therefore has to take action in each case of a dumped import which competes with Canadian products, certain imports can be freed by an Order in Council based on Section 6 (2) (ii) of the Customs Tariff Act. Use of this possibility has been made, for example, in connexion with imports from countries which refund certain social charges to the exporters, a practice which is considered by Canada as subsidization (Question 12).

Only Australia and the United States levy anti-dumping and countervailing duties to the full amount in all circumstances. Canada which in principle levies the full anti-dumping duty, provides that such a duty should not be higher than 50 per cent of the value of the imported product. New Zealand, Rhodesia and South Africa (Question 20) state that the anti-dumping duties may be limited in certain circumstances to smaller amounts than the dumping margin. Furthermore, in the Union of South Africa where anti-dumping duties are usually levied to the full extent of the margin, a provision exists that such duties which would not be more than 5 per cent of the export price, are not collected (Question 30).

Difficulties in the Application of anti-dumping and similar Duties (Question 6)

1. Definition of the term: "Material Injury"

The Norwegian and Swedish Governments draw attention to the difficulties which arise in the interpretation of the term "material injury". The question whether the injury caused or threatened to a domestic industry is serious enough to justify the levy of an anti-dumping or countervailing duty is open to different interpretations. It certainly would be possible to specify whether the whole industry, or just a branch or a segment, needs to be affected in order to justify the application of such duties. A definition of the extent of the

1 Of the eight countries included in this study only Sweden (pages 105 and 107) and of the countries not included, Norway (page 144), report certain difficulties.
injury, however, would create a great number of problems. If the requirement were expressed in percentage figures, stating e.g. that the damage is to be considered a material injury if the production (or sale?) of the relevant national goods for the domestic market decreased by 10 per cent, this would lead to a number of almost insurmountable practical difficulties such as obtaining appropriate statistical data and proving that the reduction is really the consequence of dumping and not of other economic factors. If such statistical calculations are difficult in instances where the damage has already occurred, in cases of a threat of injury they would be impossible.

2. **Permissibility of the Application of Basic Prices in the Relevant Decrees**

Norway and Sweden also draw attention to the difficulties countries may encounter in complying with the great number of requirements in connexion with the levy of anti-dumping and similar duties for the countries applying such duties viz.: to prove the amount of dumping and to provide for this proof in time and on a basis of satisfactory documentation. Mainly Sweden considers that a number of these difficulties could be overcome by the use of basic prices.

The fact that such basic prices oblige the importer to prove that the products were not dumped was considered by the Panel appointed by the CONTRACTING PARTIES in 1954 to examine the Italian complaint against the application of anti-dumping duties on nylon stockings by Sweden (Third Supplement of the BISD, page 81). A number of conclusions reached by the Panel may be of special interest in considering this suggestion. In the first instance, the Panel came to the general conclusion that:

"(a) the basic price system was not inconsistent with the most-favoured-nation clause or with the provisions of Article VI;

(b) but that, in practice, the administration of that system might easily run into conflict with those obligations".

Of the remarks made by the Panel in considering the various specific points stressed by the Italian delegation, the following may be the most important. The fact that only a part of dumped imports are affected in the case of a basic price excluding those imported at prices higher than these prices does not permit in itself the conclusion that such prices are not in conformity with Article VI, since this Article cannot be understood as an obligation to levy anti-dumping and countervailing duties.

It was pointed out, however, that such a system may be more prejudicial to the interest of low cost producers than other anti-dumping techniques, since it removes the competitive effect of the goods of the low cost producer. (Paragraphs 8 - 13 of the Panel Report).

Another suggestion of the Panel (Paragraph 10) that such basic prices should be equivalent to or lower than the actual price on the market of the lowest cost producer, may be difficult to comply with since it imposes on the country applying anti-dumping and similar duties the obligation to prove which country is the lowest cost producer, and what is the price of the products involved in such a country.
3. **The Administrative Problems**

The definition of the term "material injury" and the application of basic prices raise, in addition to their legal aspects, very important administrative problems for the country applying anti-dumping and similar duties. The statements of Norway and Sweden clearly point at the difficulties which exist in establishing a satisfactory documented basis concerning prices and other data which are available only in a foreign country and of obtaining this information in time to serve its purpose. Although the adoption of basic prices would eliminate a number of administrative difficulties of the countries applying anti-dumping duties, a number of other problems would remain.

Problems also arise for the importers and for the governments of the exporting countries, particularly of those with relatively low prices and of those having a State-trading economy. These problems arise from the fact that the application of anti-dumping duties, especially if basic prices are used, takes place in the administrative field, and therefore may become an instrument of protection which is difficult to control. Principally there is the difficulty of presenting satisfactory proof in time that the products have not been dumped. In the second part of the above-mentioned Panel Report, (paragraphs 18 - 33) the Italian delegation indicated a great number of these problems, such as the damage caused by an undue delay of decisions, the difficulty of proof of prices and other information available only in a foreign country, the uncertain basis of requested calculation, etc.

In view of the difficulties which some contracting parties have experienced in the application of anti-dumping duties and countervailing duties the CONTRACTING PARTIES may wish to consider ways and means of assisting them in finding satisfactory solutions.
I

GENERAL ANALYSIS OF ANTI-DUMPING AND COUNTERVAILING LEGISLATION

IN

AUSTRALIA

Introduction

Australian anti-dumping legislation is analyzed in Annex A. It does not distinguish between anti-dumping and countervailing duties. The legislation is so framed that its provisions may be used against subsidized products and Australia may therefore impose duties, some of which are in the nature of countervailing duties in the sense of the GATT terminology. (See Section B).
ANTI-DUMPING LEGISLATION

Part I - General

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

   The terminology is different, but the effect of the legislation is fundamentally similar to Article VI of GATT.

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

   The provisions used are set out in Sections 4 to 7 of the Customs Tariff (Industries Preservation) Act 1921-1956 (see answers to questions 7 and 8).

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI insofar as contracting parties are concerned?

   Not wider in scope.

4. What problems of international trade have been dealt with by recourse to these provisions (commercial dumping, State subsidies, differential exchange rates, imports from State trading countries, etc.)?

   Commercial dumping only.

5. (a) What are the cases in which an anti-dumping duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

   (b) How many requests for the application of anti-dumping duties have been received from domestic producers since 1948?

(a) Since 1948, the provisions of Australian anti-dumping legislation have been invoked in respect of the goods listed below. Dumping duty is not charged on all shipments of these products from the sources specified but only on such shipments which come within the scope of the definitions of dumping (e.g. selling below the fair market value or at less than a reasonable price) contained in relevant sections of the Australian legislation.

<table>
<thead>
<tr>
<th>Goods</th>
<th>Country</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ladies' fully fashioned hosiery of nylon or similar polyamide yarns (Section 4)</td>
<td>All countries</td>
<td>From 11 February 1952</td>
</tr>
<tr>
<td>Goods</td>
<td>Country</td>
<td>Date</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Acetyl salicylic acid (Section 4)</td>
<td>United Kingdom</td>
<td>From 7 February 1952</td>
</tr>
<tr>
<td>Acetyl salicylic acid (Section 6)</td>
<td>United Kingdom</td>
<td>From 7 February 1952</td>
</tr>
<tr>
<td>Slide fasteners of the progressive interlocking type (Section 4)</td>
<td>All countries</td>
<td>From 1 April 1953</td>
</tr>
<tr>
<td>Tetra-methyl thiuram disulphide (Section 4)</td>
<td>All countries</td>
<td>From 28 June 1956</td>
</tr>
<tr>
<td>Zinc Diethyl dithiocarbamate (Section 4)</td>
<td>All countries</td>
<td>From 28 June 1956</td>
</tr>
<tr>
<td>Zinc dimethyl dithiocarbamate (Section 4)</td>
<td>All countries</td>
<td>From 28 June 1956</td>
</tr>
<tr>
<td>Low power factor chokes (Section 4)</td>
<td>All countries</td>
<td>From 13 June 1956</td>
</tr>
<tr>
<td>Wooden safety matches (Section 5)</td>
<td>All countries except United Kingdom</td>
<td>From 12 April 1933</td>
</tr>
</tbody>
</table>

6. What are the special difficulties which have been encountered in applying the national anti-dumping legislation?

None.

Part II - National Legislation and Regulations

7. How is the extent of dumping defined?

The extent of dumping is defined in Sections 4 to 7 of the Customs Tariff (Industries Preservation) Act 1921-1956. (See Appendix I).

8. If the legislation provides for the determination of the dumping margin by the application of the under-mentioned criteria, how are the criteria defined?

(a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country" (Article VI, paragraph 1(a)).

Not included in this analysis are the Sections 8 to 11 (special exchange duty) and the Section 11A (emergency duty) introduced in 1956 for the reason that no practical use has been made of them. For the sake of a complete documentation, however, they have been attached by the secretariat in Appendix II.
(b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade" (Article VI, paragraph 1(b)(i)).

(c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit" (Article VI, paragraph 1(b)(ii)).

(a) The criterion in (a) is defined in Section 3 of the Customs Tariff (Industries Preservation) Act 1921-1956 as follows (see Appendix):

"The Fair Market Value" of goods means the fair market value of the goods, or of goods of the same class or kind, sold in the country of export in relation to which the expression is used, for home consumption in the usual and ordinary course of trade plus free on board charges in that country, but not including any Excise duties payable in that country.

(b) The legislation does not provide for (b).

(c) The criterion in (c) is defined in Section 5(4) of the Customs Tariff (Industries Preservation) Act 1921-1956, as follows:

In this section "a reasonable price" means such a price as represents the cost of production of the goods, plus such addition, not exceeding 20 per cent, as is determined by the Minister after inquiry and report by the Tariff Board, plus free on board charges.

9. Does the legislation provide that criteria (b) above may be used only when (a) is not ascertainable and similarly that criteria (c) may be used only when (a) and (b) are not ascertainable?

Criterion (b) is not applicable. The legislation does not provide that criterion (c) may be used only when (a) is not ascertainable.

10. In the price calculations is provision made:

(a) for differences in conditions and terms of sale;
(b) for differences in taxation; and
(c) for other differences affecting price comparability?

In making necessary price calculations, account is taken of all relevant factors affecting price comparability with the object of achieving a fair and common basis. In calculating "fair market value" as defined in Section 3 of the Customs Tariff (Industries Preservation) Act 1921-1956, the ordinary market value of the goods, or goods of the same class or kind, in the country of export must be ascertained and for such purposes, prices to domestic wholesalers are normally used.
11. Are the calculations to be based on:

(a) the price of the same product from the same producers;
(b) the price of a similar product from the same producer;
(c) the price of a like product from other producers in the exporting country;
(d) average prices for like products in the exporting country; or
(e) prices for like products in a third country?

The fair market value, as defined in the legislation, refers to "the goods" or "goods of the same class or kind". Consequently, calculations may be based on one or more of the criteria mentioned in (a), (b), (c) and (d) above but more particularly on (c). Regarding (e) no calculations are based on prices for like products in a third country.

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

Yes. The legislation provides that, if the Minister is satisfied that "detriment" may result to an Australian industry, dumping duties may be imposed following the publication of a notice in the Commonwealth Gazette. The criterion for determining "detriment" is that the Landed Duty Paid Cost is lower than the Australian manufacturer's wholesale selling price. In the case of Sections 4 to 7 of the Customs Tariff (Industries Preservation) Act 1921-1956, a public inquiry and report by the Tariff Board is necessary before the Minister may act.

13. Is there provision for the levy of anti-dumping duties on:

(a) products imported from a country other than the country of origin; or
(b) products which are not themselves dumped (or subsidized) but which are made from products which have been dumped or subsidized in a third country?

(a) Yes; anti-dumping duty is levied regardless of the country of origin. (See definition of Fair Market Value).

(b) No.

14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

No.

15. What relationship exists between the customs valuation system and the determination of prices for the application of anti-dumping duties?

The valuation for duty purposes is the individual exporter's prices on the domestic or export market while the Fair Market Value is the overall domestic selling price.
16. Are anti-dumping duties applied only on selected products specified by law, decrees, etc., or is the customs administration instructed to levy anti-dumping duties on all dumped imports?

Anti-dumping duties are applied only on selected products specified by the Minister and published in the Commonwealth Gazette.

Part III - The selection of items on which anti-dumping duties are to be levied

17. Are items placed on the list of products on which anti-dumping duties are to be levied only after investigation of a complaint by a domestic producer of injury caused by dumped imports?

Yes. The complaint originates from an affected party and must be investigated in public enquiry before the goods are listed.

18. (a) At what stage is a claim of injury investigated?
(b) Do these investigations take account of the effects of dumping or subsidization on a single producer, a branch of an industry, or the whole industry?

(a) A claim of injury would be investigated immediately. Action to impose dumping duty would only be taken after completion of the investigation.
(b) On a whole industry as it exists in Australia or a single producer, a branch of an industry, or a number of independent producers.

19. What is the procedure in the pre-selection stage:
(a) investigation, (b) burden of proof, (c) decision, (d) appeal?

(a) Investigation of a complaint is carried out by the Department of Customs and Excise. If it appears that there is a prima facie case of dumping, the matter is referred to the Tariff Board for public enquiry.
(b) The burden of proof rests with the complainant against evidence submitted by any interested parties to the Tariff Board at a public enquiry.
(c) The decision is made by the Minister for Customs and Excise following the submission of the Tariff Board's Report.
(d) No appeal is specifically provided for in the legislation but there is the possibility of recourse to the Courts if a decision appeared not to be in conformity with the law.
20. (a) Is the anti-dumping duty fixed in the proclamation? or
(b) Has it only the effect of empowering the customs administration to levy an anti-dumping duty - leaving the final finding concerning the existence and extent of the dumping in the cases of the actual imports to the customs authorities?

(a) No.

(b) The Notice issued by the Minister in terms of the Act not only empowers but requires the Customs Department to collect dumping duty where the facts of each transaction show that dumping exists and the amount of dumping duty is determined by those facts, e.g., the difference between the Fair Market Value and the Selling Price.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

The duty is applied to all imports of the product specified in the Notice where the necessary facts exist, e.g. where the export price is less than the fair market value. It applies to shipments from all countries unless otherwise specified but can be limited to any country or shipment, etc.

As to the manner of specifying goods attention is invited to Section 13 of the Act quoted hereunder:

"13. The powers given by this Act to the Minister to publish notices specifying goods shall extend to the publication of notices specifying goods of any particular class or kind or to any particular shipment of goods or to goods exported by any particular exporter or to goods specified in such other manner as the Minister thinks fit, and, if the notice so provides, to all or any goods entered for home consumption on or before the date of issue of the notice as well as to goods entered for home consumption after that date."

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of anti-dumping duties?
(b) Do the prices so laid down have the effect of limiting the extent of the anti-dumping duties which can be applied?

(a) The Gazette Notice may, but does not usually, lay down prices. The prescribed operation of the system is such that more expensive goods may be imported without payment of dumping duty.

(b) Not applicable in practice.
23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

A Notice may specify goods in a particular shipment or goods exported on a particular date or during a particular period and, in such cases, the application of the Notice is limited by those particular circumstances. Otherwise Notices are not limited in time but remain in force until repealed.

Part IV - The administration of anti-dumping duties by customs authorities in respect of each individual consignment

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

No. Action is taken only in respect of goods specified by Notice.

25. If the normal value is to be determined by the administration, how is the necessary information obtained?

The dumping margin is determined by the Customs in accordance with the value as defined in the Customs Tariff (Industries Preservation) Act 1921-1956. The necessary information is obtained by official enquiry.

26. If the injury caused or threatened is to be determined by the administration, how is this done?

This function is not performed by the Customs. The Minister determines whether detriment is caused - see question 12.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Yes, if included in the specification in the Notice.

28. What is the procedure in the assessment stage?

(a) burden of proof; or (b) appeal?

(a) A case of dumping is disclosed by the facts of a subject transaction (e.g. where the selling price is less than the fair market value) and the amount of dumping duty payable is determined by those facts. The onus of proof that goods may not be subject to the application of an existing notice or that an assessment of dumping duty may have been made on an incorrect basis would rest with the importer.

(b) Any importer may submit a case to the Minister for reconsideration and may contest decisions of the Minister in the Courts.
29. (a) When dumping is suspected can the goods be cleared against security?
(b) How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

(a) Security is not required on suspicion only, but when a prima facie case is established goods may be cleared against security pending the holding of an inquiry by the Tariff Board and the publication of the Minister's decision.

(b) The Tariff Board and the Administration endeavour to expedite decisions.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

Yes.
Note concerning the relation of the Australian provisions with the GATT provisions for countervailing duties

Since the terminology of the Australian legislation does not distinguish between anti-dumping duties and countervailing duties, the replies given in Annex A also relate to the application of those duties which, in the terminology of GATT, would be considered countervailing duties. Except in respect of freight subsidies in Section 7 of the Customs Tariff (Industries Preservation) Act 1921-1956, there is no type of dumping duty in Australia which, in effect, operates as a countervailing duty. However, if exports are subsidized, this could have the effect of bringing such exports within the scope of the dumping provisions of the several sections of the Act.
4. Dumping duty

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods exported to Australia, which are of a class or kind produced or manufactured in Australia, have been or are being sold to an importer in Australia at an export price which is less than the fair market value of the goods at the time of shipment, and that detriment may thereby result to an Australian industry, the Minister may publish a notice in the Gazette specifying the goods as to which he is so satisfied.

2. Upon the publication of the notice there shall be charged, collected and paid to the use of the King, for the purposes of the Commonwealth, on those goods imported into Australia a special duty (in this section referred to as "the dumping duty").

3. The amount of the dumping duty in each case shall be the sum which represents the difference between the fair market value of the goods at the time of shipment and the export price:

   Provided that where the importer satisfies the Minister that he purchased the goods within six months prior to the time of shipment and that after the date of purchase and prior to the date of shipment the fair market value of the goods had increased, the fair market value to be taken for the purposes of this section shall be the fair market value at the date of purchase.

4. The regulations may provide for the exemption of the following goods from the dumping duty:

   (a) any goods or class of goods in respect of which the Minister is satisfied after report by the Tariff Board, that the goods or classes of goods are not made in Australia in substantial quantities and offered for sale to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

   (b) any goods in respect of which the difference between the fair market value and the export price does not exceed 5 per cent of the fair market value;
(c) any goods in respect of which the difference between the fair market value and the export price does not exceed 10 per cent of the fair market value, the Minister is satisfied, after report by the Tariff Board, that the exemption would not be detrimental to any Australian industry; and

(d) goods, being articles of merchandise, for use bona fide as samples for the sale of similar goods.

5. Dumping below cost duty

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods produced or manufactured outside Australia have been or are being sold to an importer in Australia at an export price which is less than a reasonable price, and that detriment may thereby result to an Australian industry, the Minister may publish a notice in the Gazette specifying the goods as to which he is so satisfied.

2. Upon the publication of the notice, there shall be charged, collected and paid to the use of the King, for the purposes of the Commonwealth, on those goods imported into Australia, a special duty (in this Section referred to as "the dumping below cost duty").

3. The amount of the dumping below cost duty in each case shall be the sum which represents the difference between a reasonable price of the goods at the time of shipment and the export price of the goods.

4. In this Section "a reasonable price" means such a price as represents the cost of production of the goods, plus such addition, not exceeding 20 per cent, as is determined by the Minister after inquiry and report by the Tariff Board, plus free on board charges.

5. In the absence of satisfactory evidence as to cost of production the Minister may, after report by the Tariff Board, fix such amount as he thinks fit as the cost of production, and the amount so fixed shall, for the purposes of this Section, be deemed to be the cost of production.

6. Provisions in case of goods on consignment

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods have been or are being consigned to Australia for sale, and that they may be sold at less than a reasonable selling price, and that detriment may thereby result to an Australian industry, the Minister may publish a notice in the Gazette specifying the goods as to which he is so satisfied.
2. Upon the publication of the notice in the Gazette there shall be charged, collected, and paid to the use of the King, for the purposes of the Commonwealth, on those goods imported into Australia, a special duty (in this Section referred to as "the dumping consignment duty").

3. The amount of the dumping consignment duty in each case shall be the sum which represents the difference between the wholesale selling price in Australia and a reasonable selling price.

4. In this Section "a reasonable selling price" means the price ascertained upon the following basis, namely:- To the fair market value of the goods there shall be added the freight, insurance, landing and other charges, together with the amount of duty payable under the Customs Tariff, together with such addition, not exceeding 15 per cent on the aggregate of all the items mentioned, as is determined by the Minister after inquiry and report by the Tariff Board.

5. If the evidence of the fair market value is, in the opinion of the Minister, insufficient, the Minister may, for the purposes of the last preceding sub-Section, substitute in lieu thereof the ascertained cost of production plus such addition, not exceeding 20 per cent of such cost, as is determined by the Minister after inquiry and report by the Tariff Board, or, if the cost of production is not ascertainable, the cost of production estimated from such information as is available, plus such addition, not exceeding 20 per cent of such estimated cost, as is determined by the Minister after inquiry and report by the Tariff Board.

7. Dumping freight duty

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that any goods exported to Australia, of a class or kind produced or manufactured in Australia, have been or are being carried -

   (a) in subsidized ships at rates of freight lower than the normal rate of freight; or

   (b) at ballast rates of freight, being rates lower than the normal rate of freight; or

   (c) freight free,

or that, by reason of any circumstance, including the granting of rebates, refunds or other allowances, the amount or the net amount of freight paid or payable on goods exported to Australia, of a class or kind produced or manufactured in Australia, is lower than the amount of freight which would have been or would be payable at the normal rate of freight, and that in any such case detriment may thereby result to an Australian industry, the Minister may publish a notice in the Gazette specifying the goods as to which he is so satisfied.
2. Upon the publication of the notice, there shall be charged, collected and paid to the use of the King, for the purposes of the Commonwealth, on those goods imported into Australia a special duty (in this Section referred to as "the dumping freight duty").

3. The dumping freight duty shall be -

(a) in the case of goods which have been or are being carried freight free - the amount which would have been or would be payable as freight on those goods if they had been or were carried at the normal rate of freight; and

(b) in the case of any other goods - such amount as, in the opinion of the Minister, is equal to the sum by which the freight which would have been or would be payable on those goods if they had been or were carried at the normal rate of freight exceeds the freight or the net freight paid or payable on those goods.

4. The normal rate of freight in respect of any goods to which this Section applies shall, for the purposes of this Section, be such as is determined by the Minister, but not exceeding the highest rate of freight payable, at the date of shipment of those goods, on similar goods carried by general cargo vessels which, in the opinion of the Minister, trade regularly with Australia.

5. If any dispute arises as to the rate of freight in respect of any goods, or the amount of any rebate, refund or other allowance in respect of freight on goods to which this Section applies, that rate or that amount shall, for purposes of sub-Section 3 of this Section, be such rate or amount as the Minister determines.
8. **Exchange special duty**

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that the exchange value of the currency of the country of origin of any goods has depreciated in relation to Australian currency, and that by reason of such depreciation goods have been or are being sold to an importer in Australia at prices which will be detrimental to an Australian industry, the Minister may publish a notice in the Gazette specifying the country as to the exchange value of the currency of which he is so satisfied, and the goods originated in that country to which in his opinion the provisions of this section should apply.

2. Upon the publication of the notice, there shall be charged, collected and paid to the use of the King, for the purposes of the Commonwealth, on all goods specified in the notice and produced or manufactured in the country specified therein, a special duty ascertained as follows:

   (a) From the nominal par value in sterling of a unit of the currency of the country of origin of the goods there shall be deducted the value in Australian currency of the same unit at the date of exportation of the goods;

   (b) The amount ascertained under the last preceding paragraph shall be divided by the value in Australian currency of a unit of the currency of the country of origin of the goods at the date of exportation of the goods; and

   (c) The figure ascertained under the last preceding paragraph shall be multiplied by the value for duty of the goods assessed in accordance with the Customs Act 1901-1930.

9. **Dumping preference duty**

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that, by reason of the depreciation in exchange value of the currency of the country of origin or export of any goods, in comparison with the currency of the United Kingdom, goods exported to Australia, which have been produced or manufactured in any country other than the United Kingdom, and are of a class or kind produced or manufactured in the United Kingdom, have been or are being sold to an importer in

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1 For the sake of a complete documentation these provisions have been attached although they are for the time being not used and therefore not included in the Analysis.
Australia at an export price which is less than the fair market value of goods of like character or quality made in the United Kingdom, when sold for home consumption therein in the usual and ordinary trade course, plus the ordinary free on board charges therein (in this section referred to as "the fair market value in the United Kingdom"), the Minister may publish a notice in the Gazette specifying the goods as to which he is so satisfied.

2. Upon the publication of the notice, there shall be charged collected and paid to the use of the King for the purposes of the Commonwealth, on those goods imported into Australia, a special duty (in this section referred to as "the dumping preference duty").

3. The amount of the dumping preference duty in each case shall be the sum which represents the difference between the fair market value in the United Kingdom and the export price.

4. Notwithstanding anything contained in the Customs Act 1901-1920, the value for duty under that Act of goods dutiable under this section shall be the value ascertained in accordance with that Act plus the dumping preference duty imposed under this section.

10. **Dumped materials duty**

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, that goods have been or are being sold to an importer in Australia, which were manufactured wholly or in part from material supplied from any country whose currency has depreciated by comparison with the currency of the country to which the material was supplied, and that the manufactured goods have been or are being sold to an importer in Australia at a price below the price at which the same goods could have been manufactured in the country of manufacture if made from material of such country of manufacture, and allowing for a reasonable profit, the Minister may publish a notice in the Gazette specifying the goods as to which he is so satisfied.

2. Upon the publication of the notice there shall be charged, collected and paid to the use of the King, for the purposes of the Commonwealth, on those goods imported into Australia, a special duty (in this section referred to as "the dumped materials duty").

3. The amount of the dumped materials duty shall be the sum which represents the difference between the price at which the goods were or are being sold to Australia, and the price representing what would have been the fair market value of the same goods if the goods had been manufactured wholly in the country of export from materials of that country.
11. Evasion of duty under sections 9 and 10 by consignment

If the Minister is satisfied, after inquiry and report by the Tariff Board, that the duty imposed by any of the last three preceding sections is likely to be evaded by the consignment of goods to Australia for sale, he may direct that there shall be payable on any goods specified to him, by notice published in the Gazette, which have been consigned to Australia for sale, a duty in an amount which will in his opinion assure that the goods will not be sold in Australia at less than a reasonable selling price as defined in section six, and duty in that amount shall thereupon be charged, collected, and paid to the King for the purposes of the Commonwealth on such goods.

11A. Emergency duty

1. If the Minister is satisfied that any goods produced or manufactured in a particular country are being imported into Australia under such conditions as to cause or threaten serious injury -

   (a) to producers in Australia of like or directly competitive goods; or
   
   (b) to producers in a third country of like or directly competitive goods which are dutiable at a rate applicable under the British Preferential Tariff or at a rate lower than the rate that would be applicable under that tariff,

he may publish a notice in the Gazette specifying the goods as to which he is so satisfied.

2. The Minister shall not publish a notice in pursuance of the last preceding sub-section unless he is satisfied that the publication of the notice is not inconsistent with the obligations of Australia to another country under an international agreement relating to tariffs or trade.

3. Upon publication of a notice under this section, there shall be charged, collected and paid to the use of the King, for the purposes of the Commonwealth, on goods specified in the notice imported into Australia a special duty (in this section referred to as "the emergency duty").

4. The amount of the emergency duty in each case shall be a sum equal to the amount, if any, by which the landed duty-paid cost of the goods is less than a reasonably competitive landed duty-paid cost ascertained as determined by the Minister.

5. In making a determination under the last preceding sub-section in relation to goods produced or manufactured in a particular country, the Minister shall, if like or directly competitive goods produced or manufactured in another country are being imported into Australia, have regard to the landed duty-paid costs of the last-mentioned goods.
6. In this section, "the landed duty-paid cost" means -

(a) in relation to goods that have been purchased by the importer - the amount, expressed in Australian currency, that is equivalent to the cost to the importer (including the amount of any duty of customs other than the emergency duty) of the goods landed in Australia; or

(b) in relation to any other goods (including goods consigned by the producer or manufacturer of the goods for sale in Australia) - the amount, expressed in Australian currency, that would have been the landed duty-paid cost, in accordance with the last preceding paragraph, if the person who owned the goods at the time of their importation into Australia had, before the goods were imported, sold them to a person in Australia and that last-mentioned person had imported them into Australia.

7. Where, in relation to any goods, the Minister is of opinion that -

(a) it is difficult to ascertain the landed duty-paid cost; or

(b) the purchase price or any other item of cost to be included in the landed duty-paid cost was not fixed on a bona fide commercial basis,

the Minister may determine the landed duty-paid cost, having regard to costs of production and manufacture in the country in which the goods were produced or manufactured and other relevant matters.
II

ANALYSIS OF ANTI-DUMPING AND COUNTERVAILING LEGISLATION

IN

BELGIUM/LUXEMBOURG

Introduction

Belgian legislation contains a general authorization for the levying of special duties on imports which cause or threaten material injury to a domestic industry. It refers to "special duties", without using the term "anti-dumping duty". The term "special countervailing duty" is used in the Executory Regulations.

As far as the rules in the GATT are concerned, the special duties provided for in Section 1, paragraph 2 of the Law of 30 June 1931 may be regarded as countervailing duties, although that provision covers only goods which "as a result of measures taken abroad by the public powers", are granted advantages such as subsidies or direct or indirect bounties on exportation.

The only cases in which the Belgian Government has so far exercised the power conferred by the law have been in the application of measures relating to imports originating from countries with a State trading policy. The attached description applies solely to these cases.

Nevertheless, it must be understood that the Belgian Government is empowered by the Law of 30 June 1931, amended by that of 30 July 1934 to introduce anti-dumping duties proper on the one hand, and on the other, countervailing duties to offset bounties granted by bodies other than the public powers. In such case, the administration would observe the same principles and use the same means as those described below. The margin of dumping would be calculated (Questions 8 to 11) in accordance with the provisions of Article VI of the GATT.

Finally, it should be noted that the Convention of 23 May 1935 established a common procedure to be used by Belgium and the Grand-Duchy of Luxembourg for the control of imports, exports and transit operations. The special duties levied on the issue of import licences are part of this common procedure.
PART I - GENERAL

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

The terminology employed in the Belgian law is not the same as in Article VI (cfr. Question 7).

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on subsidized imports?

Belgian legislation authorizes the Executive Power to dictate the special duties to be levied on the issue of import licences (cfr. Question 7).

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI in so far as contracting parties are concerned?

Although the law imposes no limits on the powers of the Executive in this connexion, the provisions of the GATT (Article VI) are respected by the Executory Orders which govern the administration's action.

4. What problems of international trade are dealt with by recourse to these provisions (state subsidies, differential exchange rates, imports from state trading countries, etc.)?

Until now, the only Executory Orders issued by the Belgian Government for the application of special duties have related to imports from countries with a State trading policy.

5. (a) What are the cases in which a countervailing duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

(b) How many requests for the application of countervailing duties have been received from domestic producers since 1948?

(a) Since 1948, there have been three cases of countervailing duties:
BELGIUM/LUXEMBURG

<table>
<thead>
<tr>
<th>Products</th>
<th>Countries</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Matches (Royal Order of 19.8.1955)</td>
<td>Czechoslovakia, East Germany, Hungary, Poland</td>
<td>As from 1.9.1955. It has been decided to abolish the special duty on imports of matches originating from Czechoslovakia, but the Executory Order has not yet been issued.</td>
</tr>
<tr>
<td>Bathtubs (Royal Order of 19.8.1955)</td>
<td>Hungary</td>
<td>As from 1.9.1955. It has been decided to abolish this special duty, but the Executory Order has not yet been issued.</td>
</tr>
<tr>
<td>Crepe fabrics of pure, artificial silk - printed; other fabrics of pure, artificial silk, not elsewhere specified - printed; other fabrics of artificial silk waste and pure, artificial textile fibres, not elsewhere specified - printed; cotton fabrics, not figured - printed (Royal Order of 10.12.1955)</td>
<td>East Germany, Hungary, Poland</td>
<td>As from 20.12.1955.</td>
</tr>
</tbody>
</table>

(b) Ten requests have been made by domestic producers since 1948 for the introduction of countervailing duties.

6. What are the special difficulties which have been encountered in applying the national countervailing duty legislation?

None.

PART II - NATIONAL LEGISLATION AND REGULATIONS

7. How is the extent of countervailing defined?

The relevant legislative provisions are the following:


"When the vital interests of the country are endangered by extraordinary and abnormal circumstances, the King may, by an Order decided at a meeting of the Council of Ministers, lay down rules governing the
importation, exportation and transit of all goods, and determine the special duties to be levied on the issue of permits granted in application of the said rules.

"The same powers are granted to ensure the implementation of international arrangements, and also with regard to goods which, as a result of measures taken by foreign governments, benefit upon exportation, from such advantages that normal competitive conditions on the Belgian market are seriously distorted."


"Royal Orders in execution of the present Law are subject to ratification by the Legislative Houses. To this effect, they shall be communicated to the Houses within three months of their publication in the 'Moniteur Belge'; if, at the end of that period, the Houses have not met and the communication has not been made, it shall take place during the first month of the next session".

8 to 11. How is the amount of subsidization determined?

The bounty or subsidy determined to have been granted, directly or indirectly, in the country with the State trading policy, on the manufacture or exportation of the imported merchandise, is estimated by comparing the f.o.b. price of the product in the Belgian market with the normal value of like merchandise.

The normal value is the value in the open market under fully competitive conditions. In practice, it represents the average of the lowest f.o.b. prices at which such or like merchandise is sold or offered in the Belgian market by manufacturers or exporters belonging to countries where trade is a matter of private enterprise.

12. Is it laid down that countervailing duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

Under the terms of Sections 1 and 2 of the Law of 30.6.1931, amended by that of 30.7.1934, it is necessary that "the vital interests of the country are endangered" or that "normal competitive conditions on the Belgian market are seriously distorted". The provisions are taken to mean that an anti-dumping or countervailing duty may be introduced only when the dumping or the subsidy causes or threatens material injury to a domestic industry or materially retards the establishment of a domestic industry.
13. Is there provision for the levy of countervailing duties on:
   (a) products imported from a country other than the country of origin; or
   (b) products which are not themselves subsidized but which are made from products which have been dumped or subsidized in a third country?

   (a) The criterion of the origin of goods and not of their provenance is a decisive factor with regard to the application of countervailing duties. When the goods in question are imported from a country other than the country of origin, therefore they are subject to countervailing duties (Section 1 of the Royal Order of 19.8.1955).

   (b) No.

14. Do the laws and regulations permit the levy of countervailing duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

   So far, no use has been made of the legal faculty provided by Section 1, paragraph 2 of the Law of 1.6.1931: "The same powers are granted to ensure the implementation of international arrangements".

15. Not applicable.

16. Are countervailing duties applied only on selected products specified by law, decree, etc., or is the customs administration instructed to levy countervailing duties on all subsidized imports?

   The Royal Order introducing countervailing duties itself specifies the products to which they shall apply.

PART III - THE CHOICE OF PRODUCTS ON WHICH ANTI-DUMPING OR COUNTERVAILING DUTIES CAN BE LEVIED

17. Are items placed on the list of products on which countervailing duties are to be levied only after investigation of a complaint by a domestic producer of injury caused by dumped imports?

   A decision to introduce special duties is normally taken following a complaint from one or more domestic producers. However, the administration may also take action without having received a complaint from the sector of private enterprise.

18. (a) At what stage is a claim of injury investigated?

   (b) Do these investigations take account of the effects of subsidization on a single producer, a branch of an industry, or the whole industry?

   (a) Before the decision.

   (b) The purpose of the enquiry is to determine the effects of the subsidies on some branch of industry.
19. What is the procedure in the pre-selection stage (a) investigation, (b) burden of proof, (c) decision, (d) appeal?

(a) The enquiry is conducted by the Department of Economic Affairs or the Department of Agriculture, depending on whether the products concerned are industrial or agricultural.

(b) The burden of proof rests with the producers who request the levy of countervailing duties as well as with the official authorities who, after an investigation, submit the case to the Administrative Committees responsible for proposing regulations to the Council of Ministers.

(c) The products are specified in a Royal Order taken by a meeting of the Council of Ministers (cf. reply to Question 16).

(d) Pending ratification by the Legislative Houses of Royal Orders based on the Law of 30 June 1931, as amended by the Law of 30 July 1934, any person claiming interest may appeal to the Conseil d'Etat for annulment on grounds of lack of due process, whether essential or prescribed under pain of being declared void of action ultra vires or misuse of power.

Once the Royal Orders have been ratified by law, they are confirmed by the legislative authority and any material defect in them ceases thereafter to be open to remedy. Their legality thenceforth escapes the jurisdiction of administrative or judicial tribunals.

20. Is the countervailing duty fixed in the proclamation, or has it only the effect of empowering the customs administration to levy a countervailing duty leaving the final finding concerning the existence and extent of the subsidization in the cases of the actual imports to the customs authorities?

Countervailing duties are determined by a Royal Order decided at a meeting of the Council of Ministers.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

The duties are levied on all imports of the product concerned originating from a country specified in the Royal Order.

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of countervailing duties?

(b) Do the prices so laid down have the effect of limiting the extent of the countervailing duties which can be applied?
BELGIUM/LUXEMBOURG

(a) No; the duty is payable on a global basis regardless of the prices of individual imports.

(b) Countervailing duties are calculated on the basis of current prices at the time when the measure is promulgated.

23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

The decision is reviewed at regular intervals in order to take into account any changes in the position. The Royal Order is abrogated as soon as the import price can be regarded as normal.

PART IV - ADMINISTRATION OF COUNTERVAILING DUTIES BY THE CUSTOMS AUTHORITIES WITH REGARD TO INDIVIDUAL CONSIGNMENTS

The questions in Part IV are not applicable, since the duties are levied at the time when the import licences are issued, without further enquiry. If the proposed import is not effected, the special duty is refunded to the holder of the licence.
The most interesting aspect of the Canadian anti-dumping legislation is the close relationship between the valuation provisions for ordinary duty purposes and the basis of determining the margin of dumping. The criteria relating to price comparability etc., enumerated in Article VI of the GATT are contained in either the provisions for valuation for ordinary duty (Section 35 of the Customs Act, Appendix 2) or in the General Regulations (Appendix 3) established under the anti-dumping section of the Customs Tariff Act (Appendix 1).

Section 6 of the Canadian Customs Tariff Act does not distinguish between anti-dumping duties and countervailing duties. Anti-dumping duties are levied on dumped products regardless of whether the dumping price results from commercial dumping or subsidization. Where the price of goods shipped to Canada has been influenced by subsidization it is not the amount of subsidy which is considered but the price differential. The following analysis in Section A, therefore, describes the Canadian anti-dumping legislation without differentiating between those levies which under the GATT provisions would be considered countervailing duties.

If the provisions of Section 6A (see Appendix 4) were applied the special duty collected would be a countervailing duty in the sense of Article VI of the GATT (see Section B).
PART I - GENERAL

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

No - but fundamentally the same (see point 7).

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

The provisions are contained in Section 6 of the Canadian Customs Tariff Act (Appendix 1).

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI in so far as contracting parties are concerned?

The Canadian Law is narrower than GATT with the exception that it is not necessary to establish injury in each instance of dumping. In practice the Canadian system of determining if a product is "of a class or kind made in Canada" confines the application of anti-dumping duty to cases where there is injury or the threat of injury. (See point 12)

4. What problems of international trade have been dealt with by recourse to these provisions (commercial dumping, state subsidies, differential exchange rates, imports from state trading countries, etc.)?

Commercial dumping, subsidization and to a certain extent imports from State-trading countries.

5. (a) What are the cases in which an anti-dumping duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

(b) How many requests for the application of anti-dumping duties have been received from domestic producers since 1948?

Canada, not having a decree system, does not keep records of either the number of requests for the application of anti-dumping duties or the number of instances in which anti-dumping duties have been applied. However, it might be indicated that the collections under the anti-dumping legislation constitute a negligible fraction of the total customs returns.
6. **What are the special difficulties which have been encountered in applying the national anti-dumping legislation?**

None.

**PART II - NATIONAL LEGISLATION AND REGULATIONS**

7. **How is the extent of dumping defined?**

The margin of dumping is the difference between the selling price - f.o.b. point of direct shipment - to the Canadian importer on the one hand (Section 6 of the Customs Tariff Act - Appendix 1) and the foreign domestic value (fair market value) on the other hand, (Section 6 of the Customs Tariff Act - Appendix 1). The terms "selling price" and "foreign domestic value" (fair market value) are determined in accordance with Section 35 of the Customs Act (Appendix 2).

8. **If the legislation provides for the determination of the dumping margin by the application of the undermentioned criteria, how are the criteria defined?**

   (a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country." (Article VI, paragraph 1 (a)).

   (b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade." (Article VI, paragraph 1 (b) (i)).

   (c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit. (Article VI, paragraph 1 (b) (ii)).

   (a) Normally (Section 35(2) of Customs Act - Appendix 2).

   (b) No provision exists.

   (c) In residual cases (Section 35(7) of Customs Act - Appendix 2).

9. **Does the legislation provide that criteria (b) above may be used only when (a) is not ascertainable and similarly that criteria (c) may be used only when (a) and (b) are not ascertainable?**

See point 8.

10. **In the price calculations is provision made:**

(a) for differences in conditions and terms of sale;
(b) for differences in taxation; and
(c) for other differences affecting price comparability?
(a) Yes (Section 35 of Customs Act - Appendix 2 and General Regulations 4, 5 and 6 - Appendix 3).
(b) Yes (Section 6(3) - Appendix 1).
(c) Yes (Section 35(2), (11) - Appendix 2 and Regulations 2 and 3 - Appendix 3).

11. Are the calculations to be based on:

(a) the price of the same product from the same producers;
(b) the price of a similar product from the same producer;
(c) the price of a like product from other producers in the exporting country;
(d) average prices for like products in the exporting country; or
(e) prices for like products in a third country?

(a) Usually (Section 35(2) - Appendix 2).
(b) Sometimes (Sections 35(4) and (5) - Appendix 2)
(c) Sometimes (Sections 35(2) and (3) - Appendix 2)
(d) In special cases - end of season (Section 35(12) - Appendix 2)
(e) Possibly - where goods are imported from State-trading countries at values lower than like goods are imported from third countries having a free economy they may be valued under Section 35(6) of the Customs Act on the basis of (e).

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

No such general criteria are laid down. The Canadian system, however, permits the application of anti-dumping duties only on dumped products which are "of a class or kind made in Canada". There is no provision for dealing with dumping which retards the establishment of an industry.

The government has laid down stringent conditions for the determination that a product is of a class or kind made in Canada and the relevant decisions (of which those of general interest are published in the Canada Gazette) are continually under review independent from the anti-dumping provisions. All decisions regarding "made in Canada" status are subject to review by senior officials of the Department of National Revenue, the Tariff Board and the Courts.

Furthermore, where Canadian producers are enjoying especially favourable conditions of production or where special circumstances exist the government may (and has) used the provisions of Section 6(2)(ii) of the Customs Tariff Act to exempt certain imports from anti-dumping duties by Order in Council.
13. Is there provision for the levy of anti-dumping duties on:

(a) products imported from a country other than the country of origin; or
(b) products which are not themselves dumped (or subsidized) but which
are made from products which have been dumped or subsidized in a
in a third country?

Yes; indirectly since the margin of dumping is measured by comparing the
current domestic value of the product at the place of direct shipment to Canada
with the selling price, irrespective of the country of origin of the goods.

14. Do the laws and regulations permit the levy of anti-dumping duties
in the interest of another contracting party? (Article VI, paragraph 6(b)).

No.

15. What relationship exists between the customs valuation system and the
determination of prices for the application of anti-dumping duties?

Subject to minor qualifications the value established for ordinary duty
purposes by the customs authorities is the basis for determining the margin
of dumping (see point 7). This situation could lead to the levy of anti-dumping
duties if the Canadian Government decided to use the special valuation provisions
of the Canadian Customs Act. Recourse could be made to the provisions of
Section 38 of the Customs Act (Appendix 2) if Canada found it necessary to resort
to Article XIX of the GATT. The Canadian Agreement with Japan refers to this
provision. Apart from this, arrangements have been made with state trading
countries by which Canada could, after consultations with the countries concerned,
establish the value for duty of shipments from State Trading Countries on the
basis of fair market values obtaining in the domestic market of a third country
having a free economy (Section 35(6) of the Customs Act - Appendix 2).

16. Are anti-dumping duties applied only on selected products specified by law,
decree, etc., or is the customs administration instructed to levy anti-dumping
duties on all dumped imports?

No pre-selection - the customs administration has the obligation to levy
anti-dumping duties on each importation of "goods of a class or kind made in
Canada" that are found to be dumped (see point 12).

PART III - THE SELECTION OF ITEMS ON WHICH ANTI-DUMPING DUTIES ARE TO BE LEVIED

Since Canada has no recourse to a system which provides for a pre-selection
of products, questions 17 - 23 do not apply.
PART IV - THE ADMINISTRATION OF ANTI-DUMPING DUTIES BY CUSTOMS AUTHORITIES IN RESPECT OF EACH INDIVIDUAL CONSIGNMENT

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

Yes:

(a) If dumping is obvious from the invoice presented, the customs appraiser assesses the dumping duty.

(b) If dumping is only suspected the customs appraiser reports the case to the Deputy Minister of National Revenue in Ottawa for investigation and decision. All decisions rendered relate to specific importations.

25. If the dumping margin is to be determined by the administration, how is the necessary information obtained?

Official enquiry by customs administration.

26. If the injury caused or threatened is to be determined by the administration, how is this done?

See answer to question 12.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Yes, but the appraiser will act only if the circumstances are identical.

28. What is the procedure in the assessment stage; (a) burden of proof (b) appeal?

(a) Burden of proof rests with the customs administration. Exporters are expected to verify the fair market value declared on customs invoices when requested to do so. Where the exporter has no domestic sales performance the administration must establish the fair-market value on the basis of the domestic sales of other firms in the exporting country.

(b) The importer has full opportunity to make representation and if he disagrees with the decision rendered he has the right of recourse to senior officials of the Department of National Revenue and the right to appeal to the Tariff Board and the Courts.
29. (a) When dumping is suspected can the goods be cleared against security?
(b) How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

(a) Entry is permitted on an undertaking from the importer that adjustment will be made to the entry if required — no security is required.
(b) The administration endeavours to expedite decisions. Delays result when exporters are slow in providing domestic market information.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

Yes; however the Law limits the anti-dumping duties to 50 per cent ad valorem.
Note concerning the relation of the Canadian provisions with the GATT provisions for countervailing duties

Canada does not distinguish between anti-dumping duties and countervailing duties. Products subsidized are treated in the same manner as dumped products. All replies given for anti-dumping duties in Section A therefore apply equally to those duties which, in the terminology of GATT, would be considered countervailing duties.

All problems, relevant to fixing the margin of dumping, by definition do not apply to countervailing duties (questions 8, 9, 10, 11 and 15).

In regard to importations from countries using multiple rates of exchange the Canadian Government recognizes the current value of such currencies in commercial transactions (Section 47(2) of the Canadian Customs Act - not reproduced). Countervailing duties are not levied to off-set advantages resulting from such transactions.

Canada in 1955 introduced into its legislation Section 6A of the Customs Tariff Acts which provides for the establishment of a countervailing duty where the price of goods exported has been subsidized either directly or indirectly by the action of a government outside Canada or an agency thereof (see Appendix 4). This provision has never been used.
Section 6 of the Canadian Customs Tariff Act

Section 6(1) In the case of goods exported to Canada of a class or kind made or produced in Canada, if the export or actual selling price to an importer in Canada is less than the fair market value or the value for duty of the goods as determined under the provisions of the Customs Act, there shall, in addition to the duties otherwise established, be levied, collected and paid on such goods, on their importation into Canada, a special or dumping duty, equal to the difference between the said selling price of the goods for export and the said value for duty thereof; and such special or dumping duty shall be levied, collected and paid on such goods although not otherwise dutiable.

(2) The special duty imposed by the preceding subsection shall in no case exceed fifty per cent ad valorem and the following goods shall be exempt from such duty:

(i) Goods of a class subject to duty under the Excise Act;

(ii) Goods or classes of goods declared exempt by any Order or regulation made by the Governor in Council.

(3) Duties and taxes imposed in the country of export shall be disregarded in estimating the value for the purposes of said duty.

(4) "Export price" or "selling price" in this section means the exporter's price for the goods, exclusive of all charges thereon after their shipment from the place whence exported direct to Canada.

(5) If at any time it appears to the satisfaction of the Minister that the payment of the special duty by this section provided for is being evaded by the shipment of goods on consignment without sale prior to such shipment, the Minister may in any case or class of cases authorize such action as is deemed necessary to collect on such goods or any of them the same special duty as if the goods had been sold to an importer in Canada prior to their shipment to Canada.

(6) If at any time it appears to the satisfaction of the Minister that any person owning or controlling or interested in a business in Canada and also in any other country, or any person carrying on a business in any other...
country and owning or controlling or interested in a business operating in Canada, and by reason thereof is enabled to import goods for further manufacture or assembling or for resale, and while complying with the legal requirements on importation disposes of such imported goods, whether in the form as imported or as further processed, assembled or manufactured, at prices below the duty paid value thereof as entered at customs plus or including all charges upon the goods after shipment from the place whence exported directly to Canada, including sales, distribution and advertising costs, and plus, if any, the cost of processing, assembling or further manufacturing in Canada, the Minister may declare that goods of such class or kind were and are on importation subject to an additional special or dumping duty not exceeding fifty per cent and authorize such action as is deemed necessary for the collection thereof.

(7) If the full amount of any special duty of customs as herein provided has not been paid on goods imported, the customs entry thereof shall be amended and the deficiency paid upon the demand of the collector.

(8) The Minister may make such regulations as are deemed necessary for carrying out the provisions of this section and for its enforcement.

(9) For the purposes of this section, goods may be deemed to be of a class or kind not made or produced in Canada where similar goods of Canadian production are not offered for sale to the ordinary agencies of wholesale or retail distribution or are not offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

(10) For the purposes of this Act articles shall not be deemed to be of a class or kind made or produced in Canada unless so made or produced in substantial quantities; and the Governor in Council may by Order in Council provide that such quantities, to be substantial, shall be sufficient to supply a certain percentage of the normal Canadian consumption and may in such Order fix such percentage.

APPENDIX 2

Valuation for Ordinary Duty

Section 35 of the Canadian Customs Act

35. (1) Whenever duty ad valorem is imposed on goods imported into Canada, the value for duty shall be determined in accordance with the provisions of this section.
(2) The value for duty shall be the fair market value, at the time when and place from which the goods were shipped to Canada, of like goods when sold in like quantities for home consumption in the ordinary course of trade under fully competitive conditions and under comparable conditions of sale.

(3) When the value for duty cannot be determined under subsection (2) for the reason that like goods are not sold under comparable conditions of sale, the value for duty shall be the fair market value, at the time when and place from which the goods were shipped to Canada, of like goods when sold in like quantities for home consumption in the ordinary course of trade under fully competitive conditions.

(4) Where like goods are not sold in the manner described in subsection (2) or (3), the value for duty shall be the fair market value, at the time when and place from which the goods were shipped to Canada, of similar goods when sold in like quantities for home consumption in the ordinary course of trade under fully competitive conditions and under comparable conditions of sale.

(5) Where like goods are not sold in the manner described in subsection (2) or (3) and the value for duty cannot be determined under subsection (4) for the reason that similar goods are not sold under comparable conditions of sale, the value for duty shall be the fair market value at the time when and place from which the goods were shipped to Canada of similar goods when sold in like quantities for home consumption in the ordinary course of trade under fully competitive conditions.

(6) When the value for duty cannot be determined under the preceding subsections for the reason that

(a) like or similar goods are not sold for use or consumption in the country of export, or

(b) there is no established market in the country of export for like or similar goods,

the value for duty of the goods shall be such value as the Minister determines.

(7) Where the value for duty cannot be determined under the preceding subsections, the value for duty shall be the actual cost of production of like or similar goods at the date of shipment to Canada plus a reasonable addition for administration costs, selling costs and profit.
(8) Where the value for duty as determined under the preceding subsections is less than the amount for which the goods were sold by the vendor abroad to the purchaser in Canada, exclusive of all charges thereon after their shipment from the place from which they were exported direct to Canada, the value for duty shall be such amount.

(9) The value for duty of imported goods shall not include the amount of any internal tax imposed on the goods within the country of origin or export from which the goods have been exempted or have been or will be relieved by means of refund or drawback.

(10) The Governor in Council may order that import duties of a country of export shall be disregarded, in whole or in part, in estimating the value for duty of goods of any kind imported into Canada from a country specified in the order.

(11) Notwithstanding the preceding subsections where the Minister is of opinion that the value for duty of any goods determined in accordance with the preceding subsections includes an amount that represents a charge for services, the Minister may reduce the value for duty so determined by such amount as he considers a reasonable charge for such services.

(12) Notwithstanding anything in this Act, where the market price of any manufactured goods in the country of export has, as the result of the advance of the season or the marketing period, declined to levels that do not reflect in the opinion of the Minister their normal price, the value for duty shall be the amount determined and declared by the Minister to be the average price, weighted as to quantity, at which the like or similar goods were sold for consumption in the country of export during a reasonable period, not exceeding six months, immediately preceding the date of shipment of the goods to Canada.

The fair market value of goods shall be taken to include the amount of any subsidy or drawback of customs duty which has been allowed by the Government of any other country, also the amount of consideration or money value of any special arrangement between the exporter and the importer, or between any persons interested therein, because of the exportation or intended exportation of such goods, or the right to territorial limits for the sale or use thereof, and also the amount or money value of any so-called royalty, rent or charge for use of any machine or goods of any description, that the seller or proprietor does or would usually charge thereon when the same are sold or leased or rented for use in the country whence they have been exported to Canada.
36. (1) Where at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that goods of any kind not entitled to entry under the British Preferential tariff or any lower tariff are being imported into Canada either on sale or on consignment, under such conditions as prejudicially or injuriously to affect the interests of Canadian producers or manufacturers, the Governor in Council may authorize the Minister to fix the value for duty of any class or kind of such goods, and notwithstanding any other provision of this Act, the value so fixed shall be deemed to be the fair market value of such goods.

(2) The value for duty shall be deemed to have been duly fixed by the Minister pursuant to subsection (1) if the same is fixed on a basis or by a method prescribed by the Minister.

(3) The operation of the value for duty of any fruit or vegetable fixed pursuant to this section may be suspended by the Minister in the case of such fruit or vegetable imported into any specified region or part of Canada.

APPENDIX 3

General Regulations to Section 6 of the Customs Tariff Act

1. Order in Council P.C. 1618, 2 July 1936 (Memorandum D No.33 Supplement B). Articles shall not be deemed to be of a class or kind made or produced in Canada unless a quantity sufficient to supply ten per cent of the normal Canadian consumption of such article is so made or produced.

2. BONA FIDE SAMPLES ADMITTED WITHOUT SPECIAL DUTY

Articles of merchandise for use bona fide as samples for sale of similar goods are to be admitted without special duty (subject, however, to ordinary duties as heretofore).

3. ADVANCE IN MARKET VALUE AFTER PURCHASE OF GOODS BY IMPORTER NOT SUBJECT TO SPECIAL DUTY

The amount of any advance in the market value of goods between the time of their purchase by the importer and the date of their exportation to Canada shall not be subject to special or dumping duty, provided the purchase agreement firmly establishes the price and quantity, and final shipment is made within a period in accordance with usual home market practice, and further provided that the actual date of purchase is established to the satisfaction of the Collector by contracts or other sufficient documentary evidence produced for his inspection and attested to.
CANADA

Under this regulation, increases in the rate of exchange between the date of purchase and date of shipment may be considered as effecting an advance in the market value of goods.

NOTE: In respect of goods subject to an ad valorem duty, the ordinary duty shall be collected on the fair market value of the goods at the time and at the exchange rate on the date of their direct exportation to Canada under the provisions of the Customs Act.

4. CASH DISCOUNTS

Special or dumping duty will not apply on account of the allowance to the purchaser in Canada of a cash discount similar in percentage and terms with that allowed generally by the exporter on home market sales.

NOTE: The Customs Act makes no provision for deduction of a cash discount for ordinary duty purposes. The fair home market value shown on invoices requires to be that on usual credit terms, and the cash discount which may be taken for cash settlement should be shown in accordance with home market practice only as terms with details as to percentage and time limitation. Where, through inadvertence, a cash discount is shown deducted on invoices, an undertaking will be required from the importer that same will not be taken unless earned by settlement in accordance with such terms.

5. FREIGHT ALLOWANCES

Where goods are sold generally in the home market of the exporter at a common delivered price (freight prepaid or allowed) to all destinations in a prescribed territory in which the place of direct shipment to Canada is located, a similar allowance may be granted to the purchaser in Canada without rendering importations liable to special duty. Such allowance may not exceed the actual carriage charges to destination in Canada.

NOTE: This allowance is not allowable for ordinary duty purposes, and should, therefore, be deducted as such only in the selling price column on invoices but not deducted when determining and showing the fair market value in principal markets of the country of export and at the place of direct shipment to Canada.

6. DEFERRED QUANTITY ALLOWANCES

Deferred allowances granted generally in the home market on the basis of quantity purchased, when similarly granted to purchasers in Canada, will not subject importations to special duty.
NOTE: Such allowances not shown and allowed and deducted on home market invoices may not be allowed for ordinary duty purposes.

Invoices to be consistent with the certificate thereon should bear a notation that the selling price is subject to a deferred quantity allowance as allowed generally in the home market.

7. JOB LOTS, SECOND, ETC.

Special or dumping duty is not applicable to bona fide job lots, remnants, second or defective goods and used or second-hand goods, the values of which have been appraised, where the selling price to the purchaser in Canada is not less than the price as sold for home consumption under like conditions.

APPENDIX 4

Section 6A of the Customs Tariff Act

Additional Duty in respect of Subsidized Goods

6A. (1) Where in the opinion of the Governor in Council subsidized goods of a class or kind made or produced in Canada have been or may be directly or indirectly imported into Canada, he may declare such goods to be subject to an additional duty on their importation equal to the amount of the subsidy on those goods as determined by him.

(2) In this section,

(a) "subsidized goods" means goods

(i) in respect of the production, manufacture, processing, purchase, sale, export or import of which a subsidy has been paid directly or indirectly by a government outside Canada, or any agency thereof, or

(ii) that have been disposed of at a loss by any such government or agency

and includes any goods obtained or derived therefrom by manufacture, assembly, processing or otherwise;
(b) "subsidy" does not include the amount of any internal tax imposed on the goods within the country of origin or export from which the goods have been exempted or have been or will be relieved by means of refund or drawback.

(3) Notwithstanding anything in this section, where goods that are subject to additional duty under this section are also subject to special or dumping duty under section 6, the amount of the additional duty payable under subsection (1) of this section shall be reduced by the amount of the special or dumping duty payable under section 6.

(4) For the purposes of this section, goods may be deemed to be of a class or kind not made or produced in Canada where similar goods of Canadian production are not offered for sale to the ordinary agencies of wholesale or retail distribution or are not offered to all purchasers on equal terms under like conditions, having regard to the custom and usage of trade.

(5) The Governor in Council may make such regulations as are deemed necessary for carrying out the provisions of this section and for its enforcement.
Introduction

The New Zealand legislation does not distinguish between anti-dumping duties and countervailing duties. Some provisions, however, are directed only against subsidized products and are therefore to be considered to be countervailing duties in the sense of Article VI of GATT. In the following a general analysis of the anti-dumping legislation of New Zealand is given under Section A, while the legislation which has been considered to be countervailing legislation is described under Section B.

Section A

ANTI-DUMPING LEGISLATION

PART I - GENERAL

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

   No, but fundamentally similar (see legal text point 7/8).

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

   The provisions are contained in Section 11 of the Customs Amendment Act 1921 (see point 7/8).

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI in so far as contracting parties are concerned?

   No wider in scope. Dumping duties can be levied only in accordance with the legislation in conformity with the principles of Article VI, and the discretionary power given to the Minister of Customs is used in the public interest and in conformity with GATT.
4. What problems of international trade have been dealt with by recourse to these provisions (commercial dumping, state subsidies, differential exchange rates, imports from state trading countries, etc.)?

Up to now only cases of commercial dumping have had to be considered. The New Zealand Government has no experience with dumped imports from state trading countries. The matter would have to be considered in the light of circumstances.

5. (a) What are the cases in which an anti-dumping duty have been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

Since under the New Zealand procedure individual cases are considered it is not possible to supply a list of cases where anti-dumping duties were levied. The following are kinds of goods on which anti-dumping duties have been levied on some shipments:

- Batteries storage
- Brass rod and sections
- Carbon paper
- Carpet sweepers
- Confectionery
- Electric light fittings and bulbs, certain
- Fire sprinkler systems
- Jams
- Jellies, concentrated
- Soap
- Ladies' stockings
- Toilet preparations
- Typewriter ribbons
- Washing machines for clothes

(b) How many requests for the application of anti-dumping duties have been received from domestic producers since 1948?

Action is taken under the New Zealand procedures by the customs administration without the necessity for a request.

6. What are the special difficulties which have been encountered in applying the national anti-dumping legislation?

None.
7. How is the extent of dumping defined?

The relevant provision of Section 11 of the Customs Amendment Act 1921 reads:

"(3) The rate or amount of dumping duty levied under this section shall be determined as follows:—

(a) In the case of goods to which paragraph (a) of the last preceding subsection applies, the dumping duty shall be an amount to be determined by the Minister, not exceeding the difference between the actual selling-price of the goods and the current domestic value of such goods;

(b) In the case of goods to which paragraph (b) of the last preceding subsection applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and the cost of production (including a reasonable profit) or similar goods in the country of origin or the country of exportation to New Zealand as at the time of such exportation;

(c) In the case of goods to which paragraph (c) of the last preceding subsection applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the amount of the special concession referred to in the said paragraph."

8. If the legislation provides for the determination of the dumping margin by the application of the undermentioned criteria, how are the criteria defined?

(a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country." (Article VI, paragraph 1(a)).

The relevant provision is contained in paragraph 3(a) (see point 7).

(b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade." (Article VI, paragraph l(b)(i)).

No similar provision exists.

(c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit." (Article VI, paragraph l(b)(ii)).

The relevant provision is contained in paragraph 3(b) (see point 7).
9. Does the legislation provide that criterion (b) above may be used only when (a) is not ascertainable and similarly that criterion (c) may be used only when (a) and (b) are not ascertainable?

The provisions contained in 3(a) (see point 7) are applied in normal instances. The provisions applied in 3(b) in the case of "end of season" sales and similar instances.

10. In the price calculations is provision made:

(a) for differences in conditions and terms of sale;

(b) for differences in taxation; and

(c) for other differences affecting price comparability?

Yes; in comparing the foreign domestic value with the export price due account is taken of the factors affecting price comparability, since the definition of foreign "current domestic value" provides for: "The fair market value of such goods when sold for cash in the ordinary course of business for home consumption in the principal markets of the country from which the goods are exported at the time when they are so exported" (Section 114 of the Customs Act 1913 - appearing in Appendix II).

11. Are the calculations to be based on:

(a) the price of the same product from the same producers;

(b) the price of a similar product from the same producer;

(c) the price of a like product from other producers in the exporting country;

(d) average prices for like products in the exporting country; or

(e) prices for like products in a third country?

The definition of the "domestic value" permits only the valuation as mentioned under (a) and (b). The systems referred to under (c), (d) and (e) are legally excluded.

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

No such general criteria are laid down. Each decision is taken within the discretion of the Minister of Customs, but each case is examined and the decision is taken in the public interest. The relevant provision of the Section 11 of the Customs Amendment Act 1921 reads:
"(8) In all cases where dumping duty may be levied under this section such duty shall be levied, collected and paid, save where the Minister may otherwise specially direct on the ground that the imposition of such duty is not required in the public interest."

13. Is there provision for the levy of anti-dumping duties on:

(a) products imported from a country other than the country of origin; or

(b) products which are not themselves dumped (or subsidized) but which are made from products which have been dumped or subsidized in a third country?

Yes, indirectly. Since the margin of dumping is measured by comparing the current domestic value in the country of exportation to New Zealand with the export price irrespective of the country of origin of the goods.

14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

Only in the case of countervailing duties. (See following section - countervailing duties.)

15. What relationship exists between the customs valuation system and the determination of prices for the application of anti-dumping duties?

The value for duty purposes is the "current domestic value" (see point 10) which also forms the basis of calculation of anti-dumping duties.

16. Are anti-dumping duties applied only on selected products specified by law, decree, etc., or is the customs administration instructed to levy anti-dumping duties on all dumped imports?

The customs administration has the obligation to levy anti-dumping duties on each import it finds dumped if the goods in question are of the kind produced in New Zealand. The decision if a product is of such a kind is taken in each case by the customs administration. The relevant provision of Section 11 of the Customs Amendment Act of 1921 reads:

"(2) A dumping duty as aforesaid may be levied in any of the cases following, namely:"
NEW ZEALAND

(a) in the case of goods imported into New Zealand of a class or kind produced in New Zealand if the actual selling-price of the goods to an importer in New Zealand is less than the current domestic value of such goods determined in accordance with the provisions of the principal Act;

(b) ....

PART III - THE SELECTION OF ITEMS ON WHICH ANTI-DUMPING DUTIES ARE TO BE LEVIED

Since New Zealand has no recourse to a system which provides for a pre-selection of products, the questions 17 - 23 do not apply.

PART IV - THE ADMINISTRATION OF ANTI-DUMPING DUTIES BY CUSTOMS AUTHORITIES IN RESPECT OF EACH INDIVIDUAL CONSIGNMENT

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

Yes.

25. If the normal value is to be determined by the administration, how is the necessary information obtained?

By official enquiry.

26. If the injury caused or threatened is to be determined by the administration, how is this done?

Consideration is given in each case having regard to the public interest and the possible injury to the domestic industry.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Yes; on imports of same products from the same exporter under like circumstances, as long as these circumstances exist.

28. What is the procedure in the assessment stage; (a) burden of proof, (b) appeal?

(a) The decision rests with the customs administration but the importer is afforded full opportunity to make representation.
NEW ZEALAND

(b) The determination of the dumping duty is subject to the same right of appeal as any ordinary duty.

29. When dumping is suspected can the goods be cleared against security? How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

Yes; as a general policy the administration endeavours, as fast as practical, to expedite decisions.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

Generally yes (in accordance with paragraph 3(a) of Section 11 - see Point 7) but in certain circumstances the amount of the anti-dumping duty had been limited in the public interest.
NEW ZEALAND

Section B

Note concerning the relation of the provisions of New Zealand with the GATT provisions for countervailing duties

Since the terminology of the New Zealand legislation does not distinguish between anti-dumping duties and countervailing duties (using the term anti-dumping duties for both types), all replies given for anti-dumping duties in Section A also relate to the application of countervailing duties with the following qualification.

All problems relevant to fixing the margin of dumping do by definition not apply to countervailing duties (questions 8, 9, 10, 11 and 15).

Point 7 should read: How is the extent of countervailing defined?

The relevant paragraphs of Section 11 of the Customs Amendment Act of 1921 read:

"2 (c) In the case of goods imported into New Zealand of a class or kind produced in New Zealand, or in the case of goods of a class or kind produced in some other part of the British dominions and imported from a country not being part of the British dominions, if the Minister is satisfied that any special concessions (whether by way of railway or shipping freight, subsidy, special bounty, rebate, or otherwise) has been or is to be allowed, taken, or granted, and if such concession will, in the opinion of the Minister, have an effect prejudicial or

"3 (c) In the case of goods to which paragraph (c) of the last preceding subsection [2(c)] applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the amount of the special concession referred to in the said paragraph."

14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI, paragraph 6(b))

Yes, but only in the case of countervailing duties and if in favour of a British dominion (including United Kingdom - see point 7 above).

For further information concerning the legislation in force in New Zealand see L/479/Add.5.
V

ANALYSIS OF THE ANTI-DUMPING AND COUNTERVAILING LEGISLATION

IN THE

FEDERATION OF RHODESIA AND NYASALAND

Introduction

The legislation of the Federation of Rhodesia and Nyasaland does not distinguish between anti-dumping and countervailing duties in the sense of GATT, but calls each of the six types of duties levied on unduly cheap imports or on goods imported under subsidized conditions, "dumping duties".

There are two duties, namely the "ordinary" and the "sales" dumping duties which could be classified under the GATT term "anti-dumping duty". They are analysed in Section A.

The four other duties (bounty, freight, exchange and surcharge dumping duty) could be considered as being countervailing duties in the sense of GATT, since it is the height of a subsidy which is decisive for the duty to be levied. Since, however, there has as yet been no occasion to impose these duties, only the basic definitions have been produced in Section B.
SECTION A

ANTI-DUMPING LEGISLATION

Part I - General

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

No. A different terminology is used, but it is, in general, similar.

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

The provisions are contained in the Customs and Excise Act, 1955, and in particular in Sections 78, 79 and 80 of that Act as read with Sections 72 and 94 of the Act.

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI insofar as contracting parties are concerned?

Not wider in scope.

4. What problems of international trade have been dealt with by recourse to these provisions (commercial dumping, state subsidies, differential exchange rates, imports from State trading countries, etc.)?

Both problems of commercial dumping and of imports from State trading countries have been dealt with by recourse to the provisions of this legislation. The class of duty imposed in all cases to date has been the "ordinary" dumping duty. In view of the fact that ordinary and sales dumping duties when imposed apply to all imports irrespective of their country of origin or of export, both commercial dumping and problems of imports from State trading countries may be covered in each case.

5. (a) What are the cases in which anti-dumping duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

<table>
<thead>
<tr>
<th>Product</th>
<th>Date of Imposition</th>
<th>Dates of Withdrawal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canvas piece goods</td>
<td>14 December 1956</td>
<td>Still in force</td>
</tr>
<tr>
<td>Asbestos cement pipes</td>
<td>15 February 1957</td>
<td>Still in force</td>
</tr>
<tr>
<td>Pipe joint fittings</td>
<td>15 February 1957</td>
<td>Still in force</td>
</tr>
</tbody>
</table>

Note: The application of such dumping duties as have been introduced under existing legislation is not confined to goods imported from any specified country or countries.
(b). How many requests for the application of anti-dumping duties have been received from domestic producers since 1948?

The Act does not prescribe any formal channels for the submission of complaints of dumping. Numerous such complaints have been received from time to time and, in four cases, have led to the appointment, in terms of Section 78 of the Act, of a Board to investigate the allegations made. These cases are:

(i) Asbestos cement piping and pipe joint fittings;
(ii) Canvas piece goods;
(iii) Certain iron and steel products;
(iv) Certain classes of footwear.

6. What are the special difficulties which have been encountered in applying the national anti-dumping legislation?

None.

Part II - National Legislation and Regulations

7. How is the extent of dumping defined?

The relevant provisions of Section 79 of the Customs and Excise Act, 1955, provide that:

(a) In the case of ordinary dumping duty the extent of the dumping shall be determined as the amount by which the "domestic value" as defined exceeds the "export price", if any such amount is greater than five per cent of the "export price"; or

(b) In the case of a sales dumping duty, the extent of the dumping shall be determined as the amount by which the "domestic value" of the goods plus freight, insurance and all charges (including landing, transportation, delivery charges and any duty other than dumping duty) to the place of sale in the Federation, exceeds the selling price in the Federation.

The "domestic value" is defined in Section 94(1) of the same Act as "the market price at which, at the time of exportation, such or similar goods are freely offered for sale for consumption in the country from which the goods are exported, to all purchasers in the usual wholesale quantities in the ordinary course of trade in the principal markets of such country ...." Relevant provisions are contained in Sections 72, 78, 79, 80, 93 and 94. (See Appendix 1).
8. If the legislation provides for the determination of the dumping margin by the application of the under-mentioned criteria, how are the criteria defined?

(a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country" (Article VI, paragraph 1(a)).

Normally, (Section 94(1) of the Customs and Excise Act as read with Section 72).

(b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade" (Article VI, paragraph 1(b)(1)).

No provision exists.

(c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit" (Article VI, paragraph 1(b)(ii)).

No provision exists.

Note: Where a domestic value cannot for any reason be established in terms of Section 94(1) of the Act as read with Section 72, then Section 94(2) provides that a value, to be taken as the domestic value of the goods in question, may be determined by the Controller of Customs and Excise.

9. Does the legislation provide that criteria (b) above may be used only when (a) is not ascertainable and similarly that criteria (c) may be used only when (a) and (b) are not ascertainable?

See Question 8.

10. In the price calculations is provision made:

(a) for differences in conditions and terms of sale;
(b) for differences in taxation; and
(c) for other differences affecting price comparability?

"For the purposes of this Act and subject to the provisions of Section 72, "domestic value", in respect of goods imported into the Federation, shall be the market price at which, at the time of exportation, such or similar goods are freely offered for sale for consumption in the country from which the goods are exported, to all purchasers in the usual wholesale quantities in the ordinary course of trade in the principal markets of such country, including the cost of packages ordinarily used in those markets, plus the extra cost of packages and packing for export, carriage to the place in such country at which the goods are finally loaded, ready for export, on a ship, aircraft or vehicle for dispatch to the Federation, and all other expenses, not
being abnormal costs described in the proviso to sub-section (2) of Section 93, incidental thereto, but shall not include any drawback of duty allowed or other taxation remitted by the government of that country on the exportation of the goods therefrom:" (Section 94(1) of the Act).

This definition is, except in the case of goods exported to the Federation on consignment, or for which nominal prices are charged or for which no charge is made, amended in its application to ordinary dumping duties by the substitution for the words of "time of exportation to the Federation" of the words "date of purchase thereof by the importer". (Section 72 of the Act).

It will be noted that, as stated under 8(a) above, the "domestic value" is based on the price at which the predominant proportion of sales take place in the country from which the goods are exported. The reference to the remission of taxation is interpreted to relate only to taxes levied directly on the goods concerned.

11. Are the calculations to be based on:

(a) the price of the same product from the same producer;
(b) the price of a similar product from the same producer;
(c) the price of a like product from other producers in the exporting country;
(d) average prices for like products in the exporting country; or
(e) prices for like products in a third country?

(a) Usually. (Section 94(1) of the Customs and Excise Act as read with Section 72).

(b) Sometimes. (Section 94(1) of the Customs and Excise Act as read with Section 72 and Section 94(2)).

(c) Sometimes. (Section 94(2) of the Customs and Excise Act).

(d) Rarely. (Section 94(2) of the Customs and Excise Act).

(e) Where a value has to be determined for goods in terms of Section 94(2) of the Act, this basis may be used.

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

Section 78(1) of the Customs and Excise Act, 1955, provides that if, after investigation and report by a board or person instructed to do so by the Minister, the Governor-General is satisfied, in respect of goods which are of a class or kind grown, produced or manufactured in the Federation, that such goods have been or are likely to be dumped in the Federation and is further of the opinion that detriment from dumping may result to an industry within the Federation and that it would be in the public interest to impose a dumping duty, he may do so by notice in the Federal Gazette.
13. Is there provision for the levy of anti-dumping duties on:
(a) products imported from a country other than the country of origin; or
(b) products which are not themselves dumped (or subsidized) but which have been dumped or subsidized in a third country?

(a) (i) If goods are exported from a country under conditions which make it possible to invoke Sections 78 and 79 of the Customs and Excise Act, dumping duties may be imposed regardless of the fact that the goods are not the national product of the exporting country.

(ii) If goods are merely transhipped from one country to another and are sold in the second country only on a commission basis, then the price comparison is made between the price to the Federation and the price of such or similar goods sold in the country in which they were manufactured.

(b) No provision exists.

14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI paragraph 6(b)).
No.

15. What relationship exists between the customs valuation system and the determination of prices for the application of anti-dumping duties?

The value for duty purposes is taken to be the "domestic value" (provided that that value shall not be less than the free on board cost to the importer) in the country of export at the time of export. (Section 93(1) of the Customs and Excise Act). The value for purposes of calculation of dumping duties differs from this in that it is the "domestic value" at the date of purchase by the importer and not at the date of export. (Section 72 of the Customs and Excise Act). (See point 10).

16. Are anti-dumping duties applied only on selected products specified by law, decree, etc., or is the customs administration instructed to levy anti-dumping duties on all dumped imports?

Dumping duties are applied only to products specified by Federal Government Notice published in the Federal Gazette after observance of the procedure set out in Section 78(1) of the Act. (See point 12).
Part III - The Selection of Items on which Anti-dumping Duties are to be Levied

17. Are items placed on the list of products on which anti-dumping duties are to be levied only after investigation of a complaint by a domestic producer of injury caused by dumped imports?

No specific provision is made in the Act for the submission of complaints of dumping. In practice such complaints originate with parties claiming injury from dumping and must be investigated in accordance with the provisions of Section 78(1) of the Act before any dumping duty can be imposed. (see point 12).

18. (a) At what stage is a claim for injury investigated?

On receipt of a substantiated complaint a person or Board appointed in accordance with Section 78(1) of the Act investigates all material aspects of the case. (See point 19(a)).

(b) Do these investigations take account of the effects of dumping or subsidization on a single producer, a branch of an industry or the whole industry?

The relevant Section 78(1) refers to "an industry" which covers a part or branch of an industry or, where appropriate, the whole relevant industry.

19. What are the procedures in the pre-selection stage: (a) Investigation, (b) burden of proof, (c) decision, (d) appeal?

(a) Where an allegation of dumping is made supported by sufficient evidence to establish a prima facie case for investigation, the Minister of Finance appoints a Board or person(s) to carry out that investigation.

(b) The person or Board appointed to investigate the case (see 18(a) and 19(a)) carries out a comprehensive enquiry, in the course of which information may be sought from all interested parties. The enquiry, however, is not public.

(c) On being satisfied that the conditions of Section 78(1) of the Act are satisfied, the Governor-General may impose a dumping duty on the goods in question by notice in the Federal Gazette.

(d) (i) Any dumping duty imposed in this manner must be submitted to the Federal Assembly for approval and, failing such approval, it lapses (Section 78(5) and (6) of the Customs and Excise Act.)

(ii) Appeals against the action taken in terms of the Act are heard in the courts of law.
20. (a) Is the anti-dumping duty fixed in the proclamation or (b) has it only the effect of empowering the customs administration to levy an anti-dumping duty leaving the final finding concerning the existence and extent of the dumping in the cases of actual imports to the customs authorities?

(a) The amount of the dumping duty leviable is not fixed in the notice and is determined in the case of each consignment by the application of the relevant provisions of Section 79 of the Act. (See point 7).

(b) The provision empowers the customs administration to levy such dumping duties as may be arrived at by the application of the appropriate provision of Section 79. See Question 30.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

The duty applies to all shipments of the goods subjected to dumping duties and imported under conditions of dumping covered by the kinds of dumping duties applied to them, with the proviso that, under Section 80 of the Act, such duties do not apply to goods imported under rebate in terms of Section 102(1)(a) of the Act (see Appendix 1) unless specifically prescribed by the Governor-General.

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of anti-dumping duties?

The laying down of prices in the notice has not yet been resorted to, but there is nothing in the legislation to restrict the application of dumping duties in this way.

(b) Do the prices so laid down have the effect of limiting the extent of the anti-dumping duties which can be applied?

If prices were laid down it would limit the field over which the dumping duties could be applied, but would not affect the amount of the dumping duty where levied. See Question 30.

23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

The dumping duty remains in force until it is amended or repealed (Section 78(2)).

Part IV - The Administration of Anti-dumping Duties by Customs Authorities in respect of each individual consignment

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

No action can be taken by the customs administration unless the item has been published in a notice in the Federal Gazette.
25. If the normal value is to be determined by the administration, how is the necessary information obtained?

The necessary information is ascertained through investigations carried out by the Department of Customs and Excise.

26. If the injury caused or threatened is to be determined by the administration how is this done?

This function is not exercised by the customs administration, but is to be found in the pre-selection stage by the Board or person appointed by the Minister.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

As long as the notice has not been amended or repealed each consignment of the specified goods is checked individually.

28. What is the procedure in the assessment stage: (a) burden of proof, (b) appeal?

(a) Dumping duties are assessed by the Controller of Customs and Excise.

(b) In the assessment stage appeal may be made to courts, the onus of proof resting with the appellant.

29. (a) When dumping is suspected can the goods be cleared against security? (b) How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

(a) Consignments of goods of classes subject to dumping duties may be cleared against security prior to the determination of the dumping duty, if any, payable on them.

(b) In respect of such consignments the relevant duties are assessed as quickly as possible.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

The dumping duties are levied in full, but in terms of Section 78(1) of the Customs and Excise Act, 1955, the Governor-General may limit the amount of the margin of the dumping duty or duties to a "percentage of the value for duty purposes of such goods or, alternatively, to a specified rate per unit of quantity, volume or weight, which percentage or alternative specific rate shall be determined by him".
Note concerning the relation of the Rhodesian provisions with
the GATT provisions for countervailing duties

Since the terminology of the Federation’s legislation does not distinguish
between the anti-dumping and countervailing duties for the GATT (the term anti-
dumping duty in fact covers both types), all replies given for anti-dumping
duties in Section A apply, mutatis mutandis, to countervailing duties with the
following qualifications:

1. **Point 7. How is the subsidy defined?**

The relevant paragraphs of Section 79 of the Customs and Excise Act, 1955,
provide that:

"bounty dumping duty ... shall be the amount of the bounty ... whether
such bounty is by way of a bonus, rebate, subsidy, or otherwise and
whether it is granted by a government or other authority or person"

"freight dumping duty ... shall be the amount by which the normal freight
on the goods in question as determined by the board or person appointed ...
exceeds the freight actually paid"

"exchange dumping duty ... shall be the amount by which the actual cost of
the goods as defined ... is less than such cost expressed in the currency
of the country of origin or export of the goods and converted into the
currency of the Federation at a rate which the Governor-General is hereby
authorized to determine and notify in the Federal Gazette"

"surcharge dumping duty /duty on products made from materials for which
Rhodesian importers have to pay export charges while the same products are
available to the producers in the exporting country free of such charges/... 
shall be determined by a rate in terms of money per unit of quantity of
goods notified by notice in the Federal Gazette which, in the opinion of
the Governor-General, is equal to the difference between the amount
charged to a manufacturer in the country in respect of which such rate is
notified and the amount charged in that country for exports to the
Federation of the quantity of such raw or manufactured material as is
contained in such unit of quantity of such goods/".

2. **Points 8, 9, 10, 11 and 15 are not applicable to countervailing duties.**
"Extracts from the Customs and Excise Act, 1955 (as amended):

Definition for the purpose of dumping duties

72. For the purposes of sections 78 and 79 -

'export price' means the price free on board at which goods are sold by the exporter to the importer in the Federation;

'domestic value' means the domestic value as defined in Section 94, but in the application of subsection (1) of Section 94 to paragraph (a) of subsection (1) of Section 78 and paragraph (a) of Section 79 for the words 'time of exportation to the Federation' there shall be substituted the words 'date of purchase thereof by the importer', except in the case of goods exported to the Federation on consignment or for which nominal prices are charged or for which no charge is made;

'actual cost' means the cost of the goods to the importer expressed in terms of the currency of the Federation, free on board at the port of shipment or place of despatch to the Federation and, in the case of goods exported to the Federation on consignment or for which nominal prices are charged or for which no charge is made, the price free on board at which similar goods are ordinarily sold for export, or if there is no such price, then the domestic value of such goods as provided for in Section 94.

Dumping duties

78. (1) If, after investigation and report by a board or person instructed to do so by the Minister, the Governor-General is satisfied, in respect of goods which are of a class or kind grown, produced, or manufactured in the Federation, that -

(a) such goods have been or are likely to be exported to the Federation at an export price which is less than the domestic value thereof as defined in Section 72;

(b) such goods have been, are being or are likely to be -

(i) imported on consignment, as defined in subsection (4) of Section 93;

(ii) imported for the account of a person resident in a country other than the Federation;

1 For further legislation see document L/479/Add.1
(iii) imported by an agent from a principal resident in a country other than the Federation;

(iv) imported by a person owning, controlling or having a financial interest in the business or firm supplying the goods;

(v) exported to a business or firm in the Federation by a person owning, controlling or having a financial interest in such business or firm; or

(vi) sold by a person in the Federation who has been, is being or is likely to be compensated in any manner for any loss incurred in selling the goods;

and have been, are being or are likely to be sold or offered for sale at a place in the Federation in the ordinary course of trade for an amount which is less than the domestic value thereof plus freight, insurance and all charges to that place, including landing, transportation, and delivery charges and any duty, other than a dumping duty, payable under this Act;

(c) such goods have been or are likely to be exported to the Federation and a bounty has been or will be granted in respect of such goods in the country in which they were grown, produced, or manufactured or from which they were exported;

(d) such goods have been or are likely to be conveyed to the Federation from a particular country or place of despatch at a rate of freight charges which is, at the time of shipment, less than the rate, certified by a board or person appointed by the Minister, as being the normal rate chargeable on that class or kind of goods or by reason of the granting of rebates, refunds, or other allowances the net amount of freight charges payable is less than the normal rate as certified above;

(e) such goods have been or are likely to be imported into the Federation from a country the currency of which has been depreciated in relation to the currency of the Federation or the currency of the country of origin of such goods which have been or are likely to be imported into the Federation has been likewise depreciated; or

(f) such goods have been or are likely to be exported to the Federation and the raw or manufactured materials from which such goods were wholly or partly manufactured are, in the country where such goods were manufactured, sold to producers or manufacturers in such country at a price which is lower than the price charged in such country for sales of such materials for export to the Federation;

and is further of the opinion that detriment from one or more of the causes set out in paragraphs (a) to (f) may result to an industry within the Federation and that it would be in the public interest to impose in respect of such goods a dumping duty, the Governor-General may by notice in the Federal Gazette notify the class or kind of goods and declare that one or more of the dumping duties enumerated in Section 79 and set forth in such notice shall be levied on goods of such class or kind which are imported into
the Federation, and from the date of publication of such notice in the Federal Gazette such dumping duty or duties shall, in addition to any other duty payable thereon, be paid on such goods by the importer on their importation into the Federation or, in the case of goods liable to sales dumping duty, by any seller of such goods within the Federation:

Provided that the Governor-General may limit the amount of dumping duty mentioned in Section 79, or if more than one of the duties so mentioned has been imposed, the total of such duties, to a percentage of the value for duty purposes of such goods, or alternatively, to a specified rate per unit of quantity, volume, or weight, which percentage or alternative specific rate shall be determined by him.

(2) The Governor-General may by notice in the Federal Gazette amend or repeal any dumping duty imposed in terms of subsection (1).

(3) Wherever the Governor-General is satisfied in terms of subsection (1) that it would be in the public interest to impose a freight dumping duty on any goods, he may for that purpose determine and notify in the Federal Gazette the minimum rate of freight charges which shall be applicable to that class or kind of goods when conveyed from any particular country or place to any place of discharge in the Federation or to any place in Africa at which goods are discharged from removal overland into the Federation:

Provided that the minimum rate of freight charges so determined shall in no case exceed the normal freight rate as certified in terms of paragraph (d) of subsection (1).

(4) The Governor-General may from time to time amend any determination made by him in terms of subsection (3).

(5) Whenever a notice is published in terms of subsection (1), the Minister shall, within fourteen days after the publication of such notice in the Federal Gazette, if Parliament is then in session, or, if Parliament is not then in session, within fourteen days of the commencement of its next session, lay before Parliament -

(a) a copy of the notice; and

(b) a statement setting out the reasons for the publication of such notice.

(6) If Parliament does not by resolution confirm any notice before the adjournment of the session during which such notice was laid before it in terms of subsection (5), such notice shall with effect from the date of such adjournment cease to be of any force. Thereupon the Governor-General shall, with effect from such date, revoke such notice.
Kinds of dumping duty

79. The kinds of dumping duties which may be imposed in terms of Section 78 shall be the following -

(a) ordinary dumping duty, which shall be the amount by which the domestic value, as defined in Section 72, exceeds the export price as defined in that section if such amount is greater than five per centum of the export price:

Provided that if there is no export price, the amount of the dumping duty shall, subject to any action taken by the Governor-General in terms of the proviso to subsection (1) of Section 78, be an amount equal to the domestic value of the goods as defined in Section 94;

(b) sales dumping duty, which shall be the amount by which the domestic value of the goods, as defined in Section 72, plus the expenses and charges set forth in paragraph (b) of subsection (1) of Section 78, exceeds the selling price in the Federation;

(c) bounty dumping duty, which shall be the amount of the bounty referred to in paragraph (c) of subsection (1) of Section 78 whether such bounty is by way of a bonus, rebate, subsidy, or otherwise and whether it is granted by a government or other authority or person;

(d) freight dumping duty, which shall be the amount by which either the normal freight on the goods in question as determined by the board or person appointed in terms of paragraph (d) of subsection (1) of Section 78 or, if a minimum rate of freight has been notified by the Governor-General in terms of subsection (3) of Section 78, the minimum freight so determined exceeds the freight actually paid;

(e) exchange dumping duty, which shall be the amount by which the actual cost of the goods as defined in Section 72 is less than such cost expressed in the currency of the country of origin or export of the goods and converted into the currency of the Federation at a rate which the Governor-General is hereby authorized to determine and notify in the Federal Gazette;

(f) surcharge dumping duty, which shall be determined by a rate in terms of money per unit of quantity of goods notified by notice in the Federal Gazette which, in the opinion of the Governor-General, is equal to the difference between the amount charged to a manufacturer in the country in respect of which such rate is notified and the amount charged in that country for export to the Federation of the quantity of such raw or manufactured material as is contained in such unit of quantity of such goods.
No dumping duty on goods imported under rebate

80. A dumping duty imposed under the provisions of Section 78 shall not apply to goods admitted into the Federation under rebate of the ordinary duty in terms of paragraph (s) of subsection (1) of Section 102 unless the Governor-General has notified in the Federal Gazette that the dumping duty shall apply to such goods.

Value for duty purposes

93. (1) For the purpose of assessing the amount of any customs duty payable on any goods imported into the Federation and for the purpose of declarations and oaths which may at any time be required by law in relation to any question of value or duty, the value of such goods shall be taken to be the domestic value as defined in Section 94:

Provided that in no case shall the value for the purpose of assessing duty be less than the free on board cost of the goods to the importer as defined in subsection (2).

(2) In this section and in Section 72, the free on board cost of any goods shall be the price to the importer of those goods at the place at which those goods are finally loaded, ready for export, on a ship, aircraft or vehicle for dispatch to the Federation, plus any charges incidental thereto, including shipping agent's or buying commission in excess of five per centum:

Provided that any abnormal costs incurred in the exportation of the goods in addition to the export price thereof incurred by the importer as the result of a state of war, strikes, lock-outs, riots or civil commotion shall not be regarded as forming part of the free on board price of the goods to the importer.

(3) When goods are exported to the Federation for the account of a person resident in a country other than the country of export or the Federation, or when goods are supplied on consignment, the Controller may determine a value which shall be deemed to be the free on board cost of such goods for the purpose of subsection (1).

(4) For the purpose of this section, goods shall be deemed to be supplied on consignment when a supplier outside the Federation consigns to a person within the Federation goods for sale on commission, such goods remaining the property of, or being held in the interest of, such supplier until sold or disposed of by the person within the Federation.

(5) If the value of any goods according to the provisions of this section is in excess of one pound but is not an exact number of pounds, then for the purpose of assessing the amount of duty payable, such value shall be calculated to the nearest pound, and, for this purpose the amount of ten shillings shall be deemed to be less than one half of one pound:
Provided that -

(i) if the values of individual items of goods are less than one pound, such values shall be entered to the nearest five shillings; and

(ii) where goods are imported by post or as passenger's baggage, the value for purposes of assessing duty shall be the value as declared, subject to such values being in conformity with the requirements of subsection (1).

Definition of domestic value

94. (1) For the purposes of this Act and subject to the provisions of Section 72, "domestic value", in respect of goods imported into the Federation, shall be the market price at which, at the time of exportation, such or similar goods are freely offered for sale for consumption in the country from which the goods are exported, to all purchasers in the usual wholesale quantities in the ordinary course of trade in the principal markets of such country, including the cost of packages ordinarily used in those markets, plus the extra cost of packages and packing for export, carriage to the place of such country at which the goods are finally loaded, ready for export, on a ship, aircraft or vehicle for dispatch to the Federation, and all other expenses, not being abnormal costs described in the proviso to subsection (2) of Section 93, incidental thereto, but shall not include any drawback of duty allowed or other taxation remitted by the government of that country on the exportation of the goods therefrom:

Provided that if such goods are imported into the Federation out of a customs or bonded warehouse situated within the districts of Beira or Lourenco Marques in Portuguese East Africa and such goods were at the time of importation into and warehousing in such districts the property of a person domiciled in the Federation, the country from which the goods were exported to such districts shall, for the purposes of this section, be deemed to be the country from which they were exported to the Federation.

(2) When goods are sold in the country from which they are exported to the Federation under such conditions that no domestic value as defined in subsection (1) can be calculated or when goods exported to the Federation are not sold for consumption in the country from which they are so exported, or are sold there in or under any manner or condition considered by the Controller to be unusual or peculiar in the marketing of such goods, the Controller may determine a value, and the value so determined shall be deemed to be the domestic value of such goods.

Suspension and rebate of certain duties

ex 102. (1) The Governor-General may under such conditions, restrictions, and regulations as he may prescribe by notice in the Federal Gazette -

(a) grant a rebate of the whole or part of the duty on raw, semi-manufactured or manufactured material or requisite of any industry used in the manufacture or refining of any article within the Federation.
ANALYSIS OF ANTI-DUMPING AND COUNTERVAILING LEGISLATION
IN THE
UNION OF SOUTH AFRICA

Introduction

The terminology of the legislation of the Union of South Africa does not distinguish between anti-dumping and countervailing duties, but the relationship between the various types of anti-dumping measures provided for in the South African legislation and the provisions of Article VI of GATT is as follows:-

Sections 83(1)(a) and 84(a)

Ordinary dumping duty is an anti-dumping duty. Covered by paragraphs 1 and 2 of Article VI.

Sections 83(1)(b) and 84(b)

Sales dumping duty is an anti-dumping duty. Covered by Interpretative Note 1 to paragraph 1 of Article VI.

Sections 83(1)(c) and 84(c)

Bounty dumping duty is a countervailing duty. Covered by paragraph 3 of Article VI.

Section 83(1)(d) and 84(d)

Freight dumping duty is in most cases a countervailing duty. Covered by words "including any special subsidy to the transportation of a particular product" in paragraph 3 of Article VI.

Section 90 is a measure to deal with certain types of disruptive competition resembling dumping.

(For above Sections see Appendix 1.)

In general answers have been given in Section A (Anti-dumping Duties) only, but the answer to question 7 can be allocated to either A or B in accordance with the above-mentioned classification by definition. Separate replies have, however, been given to questions 5 and 8 to 11 under Section B (Countervailing Duties).
SECTION A

ANTI-DUMPING DUTIES

Part I - General

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

No. A different terminology is used but its effect is fundamentally the same - see point 7.

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

The provisions are contained in sections 83 to 86 and section 90 of the Customs Act (Act 55 of 1955 as amended) - see Appendix 1.

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI insofar as contracting parties are concerned?

Not wider in scope except -

(i) paragraph (b) of sub-section (1) of section 90;

(ii) certain possible instances of freight dumping duty as specified in sections 83(1)(d) and 84(d); and

(iii) exchange dumping duty as specified in sections 83(1)(e) and 84(e).

For above-mentioned sections see Appendix 1.

No duties have been levied under any of these headings since the Second World War.

4. What problems of international trade are dealt with by recourse to these provisions (commercial dumping, state subsidies, differential exchange rates, imports from State trading countries, etc.)?

At present commercial dumping, subsidization, and to a certain extent imports from State trading countries.

Legislative provision, however, exists from dealing with certain other types of dumping, e.g. "exchange" dumping etc., - see section 83 (Appendix 1) and disruptive competition from low-priced imports, - see section 90 (Appendix 1).

5. (a) What are the cases in which an anti-dumping duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

See Appendix 4.
(b) How many requests for the application of anti-dumping duties have been received from domestic producers since 1958?

211 (during the period January 1948 to June 1957).

6. What are the special difficulties which have been encountered in applying the national anti-dumping legislation?

None.

Part II - National Legislation and Regulations

7. How is the extent of dumping defined?

(i) The relevant provisions of section 84 (Appendix 1) of the Customs Act provide that -

(a) The extent of "ordinary" dumping shall be the amount by which the domestic value as defined exceeds the export price as defined if such amount is greater than 5 per cent of the export price.

(b) "Sales dumping" shall be the amount by which the domestic value of the goods as defined plus the expenses and charges set forth in paragraph (b) of sub-section (1) of section 83 (Appendix 1), exceeds the selling price in the Union.

(c) "Bounty dumping" shall be the amount of bounty referred to in paragraph (c) of sub-section (1) of section 83 (Appendix 1), whether such bounty be by way of a bonus, rebate, subsidy or otherwise and whether it be granted by a government or other authority or person.

(d) "Freight dumping" shall be the amount by which the minimum rate of freight determined by the Minister in terms of sub-section (2) of section 83 (Appendix 1) exceeds the rate of freight actually paid.

(e) "Exchange dumping" shall be the amount by which the actual cost of the goods as defined in section 85 (Appendix 1) is less than such cost expressed in the currency of the territory of origin or export of the goods and converted into Union currency at a rate which the Minister is authorized to determine.

(ii) The relevant provisions of section 90 (Appendix 1) of the Customs Act provide that -

The extent of "special duty" shall be an amount equal to the difference between the export price and a price which is equal to -

(a) the total unit cost of production, including a reasonable profit, of such or similar goods in the country or territory of origin thereof; or
(ii) the average comparable domestic price at which such or similar goods have been sold in that country or territory during the preceding six months; or

(iii) the average free-on-board price at which such or similar goods have been exported to the Union from that country or territory during the preceding six months;

or

(b) if it has not been found possible to obtain the information necessary to arrive at a price on a basis set out in sub-paragraph (i), (ii) or (iii) of paragraph (a) -

(i) a price sufficient to cover the cost of the requisite raw materials, calculated at not less than world market prices, plus normal manufacturing costs, including a reasonable profit, in any country or territory in which such or similar goods are regularly produced and sold; or

(ii) a comparable wholesale selling price quoted by an efficient producer in the Union for such or similar goods.

Up to the present "special duties" in terms of section 90(1)(a)(ii) only have been applied - vide Appendix 4:B.

8. If the legislation provides for the determination of the dumping margin by the application of the undermentioned criteria, how are the criteria defined?

(a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country."

(Article VI, paragraph 1(a)).

Defined in section 92(1) of the Customs Act (Appendix 2) with the provisos contained in section 85 (Appendix 1).

Section 92(1) provides for prices based on usual wholesale quantities and not on comparable quantities.

(b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade."

(Article VI, paragraph 1(b)(i)).

Not defined.

(c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit."

(Article VI, paragraph 1(b)(ii)).

Defined in section 90(a)(1) (Appendix 1).

9. Does the legislation provide that criteria (b) above may be used only when (a) is not ascertainable and similarly that criteria (c) may be used only when (a) and (b) are not ascertainable?

Criteria (b) and (c) are only used when (a) is not ascertainable.
10. In the price calculations is provision made:
(a) for differences in conditions and terms of sale;
(b) for differences in taxation; and
(c) for other differences affecting price comparability?
Yes - section 92(1) (Appendix 2) and section 85 (Appendix 1).

11. Are the calculations to be based on:
(a) the price of the same product from the same producers;
(b) the price of a similar product from the same producer;
(c) the price of a like product from other producers in the exporting country;
(d) average prices for like products in the exporting country; or
(e) prices for like products in a third country?
   (a) Yes, normally, - section 92(1) (Appendix 2).
   (b) (c) (d) and (e). Only when values are determined in terms of section 92(2) (Appendix 2) and for the purposes of section 90 (Appendix 1).

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?
Yes - sections 83 and 90 (Appendix 1) provide that whenever the Minister is satisfied that goods of a class or kind manufactured in the Union of South Africa have been or are likely to be imported under the conditions prescribed in these sections to the detriment of an industry in the Union, and that it would be in the public interest for him to do so, he may impose any of the prescribed anti-dumping duties.

The criteria of "detriment to an industry" and "public interest" are not defined in the relevant legislation. The great care with which each application for the imposition of an anti-dumping or countervailing duty is investigated, however, is evidenced by the fact that out of 214 applications received during the period January 1948 to June 1957, only forty have been approved.

13. Is there provision for the levy of anti-dumping duties on:
(a) products imported from a country other than the country of origin; or
(b) products which are not themselves dumped (or subsidized) but which are made from products which have been dumped or subsidized in a third country?
   (a) and (b) Yes - section 83(1) (Appendix 1) provides that an anti-dumping duty shall be levied on the goods specified when imported from or originating in any particular country or territory.
14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

No.

15. What relationship exists between the customs valuation system and the determination of prices for the application of anti-dumping duties?

Subject to the provisos contained in section 85 of the Customs Act (Appendix I) the value for duty purposes forms the basis for calculation of anti-dumping duty – see point 7.

16. Are anti-dumping duties applied only on selected products specified by law, decree, etc., or is the customs administration instructed to levy anti-dumping duties on all dumped imports?

Only on selected products specified.

Part III - The selection of items on which anti-dumping duties are to be levied

17. Are items placed on the list of products on which anti-dumping duties are to be levied only after investigation of a complaint by a domestic producer of injury caused by dumped imports?

An anti-dumping duty is only imposed on a product when an investigation has disclosed dumping. An investigation is normally instituted by the Board of Trade and Industries following a complaint from one or more domestic producers. However, the Board may also carry out an investigation on its own initiative.

18. (a) At what stage is a claim of injury investigated?

At the time of the investigation.

(b) Do these investigations take account of the effects of dumping or subsidization on a single producer, a branch of an industry, or the whole industry?

Section 83 (Appendix I) refers to "an industry" and the effect on the industry is taken into account.

19. What is the procedure in the pre-selection stage (a) investigation, (b) burden of proof, (c) decision, (d) appeal?

(a) The investigation is conducted by a statutory body (Board of Trade and Industries).

(b) The burden of proof rests on the investigating body.

(c) The decision to impose an anti-dumping duty is taken by the responsible Minister.

(d) There is no appeal at the pre-selection stage because the whole investigation covers only factual details. If dumping of the product is discontinued, when an anti-dumping duty has been imposed, then no anti-dumping duty is collected. The remedy is, therefore, in the hands of the supplier who dumps his product.
20. (a) Is the anti-dumping duty fixed in the proclamation, or (b) has it only the effect of empowering the customs administration to levy an anti-dumping duty, leaving the final finding concerning the existence and extent of the dumping in the cases of the actual imports to the customs authorities?

(a) So far the anti-dumping duties have not been fixed in the relative notices issued but the proviso to section 33(1) (Appendix 1) empowers the Minister to limit the amount of the anti-dumping duty to a percentage of the value of the goods or to a specific rate per unit.

(b) Up to the present, yes, but see also 20(a) above.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

Only to selected products from a specified country.

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of anti-dumping duties?

(b) Do the prices so laid down have the effect of limiting the extent of anti-dumping duties which can be applied?

(a) Not normally but has been resorted to in isolated instances.

(b) The effect is merely to limit the application to goods below a certain price range.

23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

Remains in force until repealed.

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

No.

25. If the dumping margin is to be determined by the administration, how is the necessary information obtained?

Official enquiry by customs administration.

26. If the injury caused or threatened is to be determined by the administration, how is this done?

This is not exercised by the customs administration but is the function of an independent board.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Yes, where circumstances are identical.
28. What is the procedure in the assessment stage: (a) burden of proof, (b) appeal?

(a) It is usually the practice for the customs administration to apply the results of its official enquiries, but in the case of any dispute the burden of proof rests on the importers in terms of the provisions of section 145 of the Customs Act (Appendix 3).

(b) Importers are given every opportunity to make representations and right of appeal to the Minister is provided for in section 92(2) (Appendix 2) in the case of values determined in terms of this section. Importers are not of course debarred from instituting legal action in a competent court of law of the Union of South Africa.

29. (a) When dumping is suspected can the goods be cleared against security? (b) How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

(a) Yes.

(b) Special steps are taken to ensure the expeditious handling of matters of this nature. Delays are normally involved only where exporters are slow in providing domestic market information.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

Yes, except in the case of "ordinary" dumping where no anti-dumping duty is levied if the amount by which the domestic value exceeds export price is not more than 5 per cent of the export price - section 84(1) (Appendix 1).
SECTION B

Note concerning the relation of the South African provisions with the GATT provisions for countervailing duties

The terminology of the legislation of the Union of South Africa does not distinguish between anti-dumping and countervailing duty.

All replies given in Annex A will apply equally to those duties which are termed countervailing duties by GATT except that the replies to points 8, 9, 10, 11, 15 and 22 of Annex B will not be applicable and specific replies are furnished on the following points:

5 (a) What are the cases in which a countervailing duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

<table>
<thead>
<tr>
<th>Product</th>
<th>Country</th>
<th>Date From</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metal supporting poles, masts or structures including cross arms and stay fittings for overhead lines for electric power transmission.</td>
<td>Italy</td>
<td>1.2.57</td>
</tr>
<tr>
<td>Sugar</td>
<td>All</td>
<td>Since prior to 1948</td>
</tr>
</tbody>
</table>

(b) How many requests for the application of countervailing duties have been received from domestic producers since 1948?

3 (during the period January 1948 to June 1957)

8 to 11 How is the amount of subsidization determined?

By official investigation.
83. (1) Whenever the Minister is satisfied, in respect of goods which are of a class or kind produced or manufactured in the Union, that—

(a) such goods have been or are being or are likely to be exported to the Union at an export price which is less than the domestic value thereof; or

(b) such goods are being or are likely to be sold or offered for sale at a place in the Union in the ordinary course of trade for an amount which is less than the domestic value thereof plus freight, insurance and all charges to that place, including landing, transportation and delivery charges and any duty (other than a dumping or special duty imposed under sections eighty-seven or eighty-eight) payable under this Act; or

(c) such goods have been or are being or are likely to be exported to the Union and that a bounty has been or will be granted in respect thereof in the territory in which they were produced or manufactured or from which they were exported; or

(d) such goods have been or are being or are likely to be conveyed to the Union from a particular territory or place of despatch at a rate of freight less than the rate certified by the South African Shipping Board or other person designated by the Minister as being the normal rate chargeable on that class or kind of goods from that territory or place and that such abnormal rate of freight is exceptional in character; or

(e) such goods have been or are being or are likely to be imported into the Union from a territory the currency of which is depreciated in relation to Union currency, or that the currency of the territory of origin of such goods which have been or are being or are likely to be imported into the Union is likewise depreciated,

and is further of the opinion that detriment may from one or more of the above causes result to an industry within the Union, and that it would be in the public interest to impose in respect of such goods a dumping duty, the Minister may, by notice in the Gazette, notify the class or kind of goods and declare that one or more of the dumping duties enumerated in section eighty-four and set forth in such notice, shall be levied upon goods of such class or kind which are imported into the Union from or originate in a territory named in the notice, and from the date of publication of such notice in the Gazette such dumping duty or duties shall, in addition to any other duty payable thereon, be paid on such goods upon their importation into the Union: provided that the Minister may limit the amount of any dumping duty mentioned in section eighty-four (or, if more than one of the duties so mentioned has been imposed, the total of such duties) to a percentage of the value of the goods for duty purposes, or alternatively to a specific rate per unit of quantity, volume or weight, which percentage or alternative specific rate shall be determined by him.
(2) Whenever the Minister is satisfied in terms of sub-section (1) that it would be in the public interest to impose a freight dumping duty on any goods, he may for that purpose determine, by notice in the Gazette the minimum rate of freight which shall be applicable to that class or kind of goods when conveyed from any particular territory or place to any place of discharge in the Union or to any place in Africa at which goods are discharged for removal overland into the Union; provided that the minimum rate of freight so determined shall in no case exceed the normal freight rate as certified in terms of paragraph (d) of sub-section (1).

(3) The Minister may from time to time amend any determination made by him in terms of sub-section (2).

(4) The dumping duties mentioned in paragraphs (a), (c), (d) and (e) of section eighty-four shall be paid by the importer upon importation, and the dumping duty mentioned in paragraph (b) of section eighty-four shall be paid by the person in the Union who sells the goods for an amount which is less than the domestic value thereof, as defined in section eighty-five, plus the expenses and charges set forth in paragraph (b) of sub-section (1).

84. The dumping duties which may be imposed in terms of section eighty-three, shall be the following, namely:

(a) "ordinary dumping duty", which shall be the amount by which the domestic value, as defined in section eighty-five, exceeds the export price as defined in that section, if such amount is greater than 5 per cent of the export price; provided that if there be no export price, the amount of the dumping duty shall, subject to any action taken by the Minister in terms of the proviso to sub-section (1) of section eighty-three, be an amount equal to the domestic value of the goods as defined in section ninety-two;

(b) "sales dumping duty" which shall be the amount by which the domestic value of the goods, as defined in section eighty-five, plus the expenses and charges set forth in paragraph (b) of sub-section (1) of section eighty-three, exceeds the selling price in the Union;

(c) "bounty dumping duty", which shall be the amount of the bounty referred to in paragraph (c) of sub-section (1) of section eighty-three, whether such bounty be by way of a bonus, rebate, subsidy or otherwise, and whether it be granted by a government or other authority or person;

(d) "freight dumping duty" which shall be the amount by which the minimum rate of freight determined by the Minister in terms of sub-section (2) of section eighty-three exceeds the rate of freight actually paid;

(e) "exchange dumping duty", which shall be the amount by which the actual cost of the goods as defined in section eighty-five is less than such cost expressed in the currency of the territory of origin or export of the goods and converted into Union currency at a rate which the Minister is hereby authorized to determine and notify in the Gazette.
85. For the purposes of sections eighty-three and eighty-four -

"export price" means the price free-on-board at which goods are sold by the exporter to the importer in the Union;

"domestic value" means the domestic value as defined in section ninety-two less any drawback of duty granted by the government of the exporting country in respect of the goods in question on their exportation, but in the application of sub-section (1) of section ninety-two to paragraph (a) of sub-section (1) of section eighty-three and paragraph (a) of section eighty-four for the words "time of exportation to the Union" there shall be substituted the words "date of purchase thereof by the importer", except in the case of goods exported to the Union on consignment account or for which nominal prices are charged or for which no charge is made;

"actual cost" means the cost of the goods to the importer in Union currency free-on-board at the port of shipment or place of despatch to the Union, and in the case of goods exported to the Union on consignment account or for which nominal prices are charged or for which no charge is made, the price free-on-board at which similar goods are ordinarily sold for export, or if there be no such price, then the domestic value of such goods as defined in section ninety-two.

86. A dumping duty imposed under section eighty-three or a special duty imposed under section eighty-nine shall not apply to goods admitted into the Union under rebate of the ordinary duty in terms of section ninety-eight or in terms of a notice published under the provisions of paragraph (d) of sub-section (2) of section one hundred or to goods imported by or on behalf of the Government of the Union or the Government of any other Commonwealth country, unless the Minister has notified in the Gazette that the dumping or special duty shall apply to such goods.

87. Subject to the exemptions, and to any suspensions, rebates and conditions elsewhere provided for, there shall be paid on:

(a) wheat in the grain;
(b) wheaten flour and wheaten meal; and
(c) oats in the grain;

on importation into the Union, in addition to any other duties payable thereon, a special duty per cental equal to the amount by which eleven shillings and threepence in the case of wheat in the grain and eighteen shillings and sixpence in the case of wheaten flour and wheaten meal, and seven shillings in the case of oats in the grain, exceeds the cost per cental to the importer at the port of importation in the Union, which cost shall include the cost of packing, packages, landing charges, dock dues and the duties otherwise payable thereon:

1 Sections 87 to 89 were not appended to the questionnaire, but were submitted for document L/479.
Provided that

(a) the cost of such wheat, flour, meal or oats per cental to the importer, free-on-board at the port of shipment or place of despatch to the Union shall be taken to be a sum not greater than the ordinary market price for export per cental at the time of purchase, expressed in Union currency, of similar goods free-on-board at the port of shipment or place of despatch as aforesaid; and

(b) the special duty shall not apply to wheat in the grain or to wheaten flour and wheaten meal, imported into the territory of South-West Africa for consumption therein.

88. (1) Whenever, after report by the Board of Trade and Industries, the Minister is satisfied that:

(a) iron and steel products; and

(b) agricultural implements and parts therefor;

of any particular class manufactured in the Union have been or are being or are likely to be exported to the Union at a price that would cause detriment to an industry in the Union, and is further of the opinion that it would be in the public interest to levy in respect of such goods a special duty, the Minister may in respect of that class of goods from time to time determine by notice in the Gazette a price on board ship, aircraft or other vehicle at any place of discharge in the Union, or at any place in Africa at which goods are discharged for removal overland to the Union, below which price that class of goods shall not be imported into the Union through that place: Provided that the price so determined shall be an amount which, in the opinion of the Minister, upon a report by the Board of Trade and Industries, does not exceed the fair average of prices ruling in the territories where such goods are manufactured and where the manufacture thereof is not directly or indirectly subsidized, plus normal insurance and freight charges to the place of discharge.

(2) If after the issue of such notice any person imports into the Union any goods of a class to which in terms thereof such price is applicable, at a c.i.f. price which is less than the price so determined, in respect of the place of discharge of such goods, there shall be paid on such goods on importation into the Union, in addition to any other duties payable thereon, a special duty, equal to the difference between the said c.i.f. price and the price so determined.
(3) If after the issue of such notice any goods of a class to which such price is applicable are sold or offered for sale by the importer or any other person at any place in the Union in the ordinary course of trade for an amount which is less than the price so determined plus landing, transportation and delivery charges and customs duty, there shall be paid on such goods by the person so selling or offering them for sale, a special sales duty which shall be equal to the difference between the selling price and the price so determined plus the charges and duty mentioned in this sub-section: Provided that the Minister may, if he is satisfied that the goods have deteriorated in quality or value after importation, exempt the seller from payment of the whole or any portion of such special sales duty in respect of such goods.

(4) In this section "c.i.f. price" means the price paid or to be paid by the importer for the goods on board ship, aircraft or other vehicle at the place of discharge including insurance and freight charges or, if there be no such price, the export price as defined in section eighty-five together with insurance and freight charges paid or to be paid for conveyance of the goods to the place of discharge.

(5) The Minister shall, in the course of each ordinary session of Parliament, lay upon the Tables of both Houses of Parliament a report by the Board of Trade and Industries showing the prices charged by producers in the Union for the classes of goods in respect of which a price has been determined in terms of this section, and the prices charged for those classes of goods by producers in the principal territories from which such goods are exported to the Union.

89. (1) Whenever, after investigation and report by the Board of Trade and Industries, the Minister is satisfied, in respect of goods which are of a class or kind produced or manufactured in the Union, that such goods have been or are being or are likely to be exported to the Union at an export price and in quantities which may seriously prejudice the production or manufacture in the Union of goods of that class or kind, and that it would be in the public interest to impose in respect of such goods a temporary special duty, the Minister may, by notice in the Gazette impose such duty and notify:

(a) the class or kind of goods;
(b) the rate of the special duty, which may be either a percentage of the value for duty purposes, or a specific rate per unit of quantity, volume or weight; and
(c) the period during which it shall operate;

and from the date of publication of such notice in the Gazette such special duty shall, in addition to any other duty which may be payable thereon, be paid on such goods on their importation into the Union, during the period mentioned: Provided that
(i) any such special duty together with any other duty excepting a duty imposed under section seventy-nine or sections eighty-three to eighty-eight which may be payable on such goods shall not exceed one-half of the value for duty purposes as defined in section ninety-one;

(ii) any such special duty brought into operation during any session of Parliament upon a date not less than twenty-eight days before the end of that session shall lapse at the end of that session unless it has been approved of during that session by resolution of both Houses of Parliament, and any such special duty brought into operation at any other time shall lapse at the end of the next ensuing session of Parliament unless it has during that session been approved of by resolution of both Houses of Parliament, but the lapsing of any such special duty shall not detract from its validity before it lapsed.

(2) The provisions of this section shall lapse after a period of seven years from the date of commencement of the Customs Amendment Act, 1951.

90. (1) Whenever, after report by the Board of Trade and Industries, the Minister is satisfied that goods of a class or kind produced or manufactured in the Union have been or are being or are likely to be exported to the Union at an export price which, in his opinion, is below a reasonable price for such goods, and that detriment may thereby result to an industry in the Union producing or manufacturing goods of that class or kind, and that it would be in the public interest to protect such industry he may impose upon goods of that class or kind imported into the Union from or originating in any particular country or territory, a special duty equal to the difference between the said export price and a price which, in his opinion, is equal to:

(a) (i) the total unit cost of production, including a reasonable profit, of such or similar goods in the country or territory of origin thereof; or

(ii) the average comparable domestic price at which such or similar goods have been sold in that country or territory during the preceding six months; or

(iii) the average free-on-board price at which such or similar goods have been exported to the Union from that country or territory during the preceding six months; or

(b) if it has not been found possible to obtain the information necessary to enable the Minister to arrive at a price on a basis set out in sub-paragraphs (i), (ii) or (iii) of paragraph (a):
(1) a price sufficient to cover the cost of the requisite raw materials, calculated at not less than world market prices, plus normal manufacturing costs, including a reasonable profit, in any country or territory in which such or similar goods are regularly produced and sold; or

(ii) a comparable wholesale selling price quoted by an efficient producer in the Union for such or similar goods.

(2) Any special duty imposed under sub-section (1) shall be made known by notice in the Gazette and shall, from the date of publication of such notice and for the period specified therein or, where no period is so specified, until the Minister by like notice otherwise directs, be payable on the goods in question upon their importation into the Union; provided that any special duty imposed during any session of Parliament upon a date not less than twenty-eight days before the end of that session shall lapse at the end of that session unless it has been approved of during that session by a resolution of both Houses of Parliament; any such special duty imposed at any other time shall lapse at the end of the next ensuing session of Parliament unless it has during that session been approved of by resolution of both Houses of Parliament; but the lapsing of any such special duty shall not detract from its validity before it lapsed.

(3) For the purpose of this section "export price" in relation to any goods, means the price free-on-board at which such goods are sold by the exporter thereof to the importer in the Union.
APPENDIX 2

DEFINITION OF DOMESTIC VALUE

CUSTOMS ACT 1955

92. (1) Subject to the provisions of this section and of section eighty-five, the domestic value of any goods imported into the Union, shall be the market price at which, at the time of exportation to the Union, such or similar goods are freely offered for sale, for consumption in the territory from which such exportation takes place, in the usual wholesale quantities in the ordinary course of trade to all purchasers in the principal markets of that territory, including the cost of packages ordinarily used in those markets, plus the extra cost of packing and packages for export, carriage to the port of shipment or other place of final dispatch in that territory, and all other expenses (other than such abnormal costs as are described in sub-section (2) of section 91) incidental to placing the goods on board ship or vehicle at that port or place, ready for export to the Union, but shall not include excise duties or sales taxes imposed by the Government of that territory.

(2) When goods are sold in the territory from which they are exported to the Union under such conditions that no domestic value thereof can be calculated in terms of sub-section (1), or when goods exported to the Union are not sold for consumption in the territory from which they are so exported, the Commissioner may determine a value, which, subject to the right of appeal to the Minister, shall be deemed to be the domestic value of those goods.

APPENDIX 3

BURDEN OF PROOF

CUSTOMS ACT 1955

145. In any prosecution under any law relating to Customs and in any dispute in which the Minister or the Commissioner is a party, the onus of proving that the proper duty has been paid or that the goods have been lawfully imported, exported, or otherwise dealt with or not shall be on the owner or claimant of the goods.
## A. List of dumping duties imposed under Section 83 of the Customs Act

<table>
<thead>
<tr>
<th>Product</th>
<th>Country</th>
<th>Period From</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women's nylon stockings</td>
<td>United Kingdom of Great Britain</td>
<td>19.8.55</td>
</tr>
<tr>
<td>Winter sheets</td>
<td>Czechoslovakia, East Germany, Hungary</td>
<td>7.12.56</td>
</tr>
<tr>
<td>Towels of woven terry towelling</td>
<td>Belgium, Czechoslovakia, East Germany, Hungary, The Netherlands</td>
<td>14.6.57</td>
</tr>
<tr>
<td>Yarns, threads and twists, containing 50 per cent or more by weight of cotton</td>
<td>Egypt</td>
<td>28.10.55</td>
</tr>
<tr>
<td>Certain woven fabrics in the piece, containing 50 per cent or more by weight of cotton</td>
<td>Japan, Czechoslovakia, East Germany, Hungary, Poland</td>
<td>31.12.56</td>
</tr>
<tr>
<td>Baths, metal, porcelain or vitreous enamelled</td>
<td>Czechoslovakia, France (including the SAAR), Federal Republic of Germany</td>
<td>21.9.56</td>
</tr>
<tr>
<td>Bolts and Nuts</td>
<td>France (including the SAAR), Federal Republic of Germany, The Netherlands, United Kingdom of Great Britain, Belgium</td>
<td>6.8.54</td>
</tr>
<tr>
<td>Product</td>
<td>Country</td>
<td>Period From</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Woodscrews</td>
<td>Austria (Federal Republic of Germany)</td>
<td>6.8.54</td>
</tr>
<tr>
<td>Enamelware</td>
<td>Hong Kong</td>
<td>23.12.55</td>
</tr>
<tr>
<td>Drilling bits for use in the coal mining industry</td>
<td>United Kingdom (Great Britain)</td>
<td>3.12.54</td>
</tr>
<tr>
<td>Various items of electrical accessories</td>
<td>United Kingdom (Great Britain)</td>
<td>17.6.55</td>
</tr>
<tr>
<td>Distribution switchboards</td>
<td>United Kingdom (Great Britain)</td>
<td>2.3.56</td>
</tr>
<tr>
<td>Electrical transformers</td>
<td>Belgium</td>
<td>29.6.56</td>
</tr>
<tr>
<td>Electrical motors, 3 phase, not less than 1 W.P.</td>
<td>Belgium, United Kingdom (Great Britain)</td>
<td>5.8.54</td>
</tr>
<tr>
<td></td>
<td>Austria</td>
<td>29.6.56</td>
</tr>
<tr>
<td>Brake Linings</td>
<td>United Kingdom (Great Britain)</td>
<td>11.11.55</td>
</tr>
<tr>
<td></td>
<td>United States of America</td>
<td></td>
</tr>
<tr>
<td>Hot-plate controls (switches)</td>
<td>Federal Republic (Germany)</td>
<td>6.8.54</td>
</tr>
<tr>
<td>Capsules of aluminium foil for bottles</td>
<td>Belgium, The Netherlands</td>
<td>7.9.56</td>
</tr>
<tr>
<td>Certain items of household crockery of china, porcelain or earthenware</td>
<td>Japan</td>
<td>7.9.56</td>
</tr>
<tr>
<td>Tiles, wall, earthenware</td>
<td>Czechoslovakia</td>
<td>16.3.56</td>
</tr>
<tr>
<td></td>
<td>East Germany</td>
<td>12.10.56</td>
</tr>
<tr>
<td>Acetone</td>
<td>United Kingdom (Great Britain)</td>
<td>18.1.57</td>
</tr>
<tr>
<td>Toilet brushes</td>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hong Kong</td>
<td>28.9.56</td>
</tr>
<tr>
<td>Hardboard</td>
<td>Belgium, Finland, Norway, Sweden</td>
<td>6.8.54</td>
</tr>
<tr>
<td></td>
<td></td>
<td>29.10.54</td>
</tr>
</tbody>
</table>
**SOUTH AFRICA**

B. List of Special Duties imposed under Section 90 of the Customs Act

<table>
<thead>
<tr>
<th>Product</th>
<th>Country</th>
<th>Period From</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women's outerwear and underwear</td>
<td>The United Kingdom</td>
<td></td>
</tr>
<tr>
<td>Ladies' hats</td>
<td>The United States</td>
<td></td>
</tr>
<tr>
<td>Women's nylon stockings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Men's and boy's socks (and three-quarter hose)</td>
<td>Japan</td>
<td></td>
</tr>
<tr>
<td>Towels of woven terry towelling</td>
<td>Japan</td>
<td></td>
</tr>
<tr>
<td>Certain cotton piece goods</td>
<td>Hong Kong</td>
<td>7.12.56</td>
</tr>
<tr>
<td>Certain D.D.T. products</td>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>East and West Germany</td>
<td></td>
</tr>
<tr>
<td></td>
<td>United States of America</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The United Kingdom of Great Britain</td>
<td></td>
</tr>
</tbody>
</table>
ANALYSIS OF ANTI-DUMPING AND COUNTERVAILING LEGISLATION
IN
SWEDEN

Introduction

Swedish anti-dumping provisions contain a direct reference to Article VI of the GATT. Their practical application is described below.

In the application - comprising, so far, two cases of finding of injurious dumping - considerable difficulties have been encountered inter alia in determining, with reasonable despatch, the "normal value" and the existence of material injury, as well as in the gathering of sufficient evidence (see question 6).

A distinctive feature of Swedish application has been the so-called basic price, determined so as to correspond to the "normal value" in the exporting country or countries (i.e. that of those countries which has the lowest "normal value"), in connexion with the investigation carried out in the pre-selection stage. While, in that stage, the burden of proof is wholly on the authorities, the basic price will serve, in the assessment stage, as a basis for the presumption by the authorities of the existence of dumping with respect to shipments made at a price below the basic price. However, the parties concerned retain the possibility to show why, in such cases, the anti-dumping duty should not be assessed. It is felt that without such a general presumption in the assessment stage, the practical application of the GATT rules would in many cases lead to intolerable delays.

As far as countervailing duties are concerned, no such duties have been decided upon in Sweden; however, since the Swedish legislation contains a direct reference to the GATT rules, the same principles would be followed, mutatis mutandis, as with respect to anti-dumping duties.
SWEDEN

ANTI-DUMPING LEGISLATION

Part I - General

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

The authorization under which the Government can take action refers directly to Article VI of GATT, (see point 7).

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

Not applicable.

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI insofar as contracting parties are concerned?

Not applicable.

4. What problems of international trade have been dealt with by recourse to these provisions (commercial dumping, State subsidies, differential exchange rates, imports from State trading countries, etc)?

Commercial dumping so far.

5. (a) What are the cases in which an anti-dumping duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

(b) How many requests for the application of anti-dumping duties have been received from domestic producers since 1948?

(a)(i) Ladies' stockings of nylon or similar synthetic fibres manufactured in or bought from Great Britain or Northern Ireland.

Royal Proclamation No. 540 of 23 July 1953. By an amendment of this Proclamation No. 254 of 26 May 1954, and by issuing a new Proclamation No. 618 of 15 October 1954, the application of the anti-dumping duty was extended to imports from all countries regardless of the country of origin or the exporting country. This anti-dumping duty on nylon stockings was abolished by Proclamation No. 467 of 10 July 1955.


This Proclamation, which is still in force, applies to imports from all countries.
SWEDEN

5. (b) Formal requests for the application of anti-dumping duties have been made on nine occasions. In addition, complaints have been made on several occasions about foreign dumping-like competition, however without formal demand for counter measures.

6. What are the special difficulties which have been encountered in applying the national anti-dumping legislation?

(a) Determination of the "normal value". The investigations have shown that considerable difficulties exist in establishing a reliable and sufficiently extensive factual basis for determining the "normal value". When a uniform product (raw material, semi-finished product) is involved, it should be possible to establish with relative certainty the home market price in the exporting country. As regards manufactured products, however, there are considerable problems in this respect because of lack of uniformity in pricing, variations in finish and quality, the existence of branded products, different forms of distribution, etc. Especially worth noting in this connexion are the difficulties in determining the "normal value" of products exported from countries with centrally planned and controlled economies and concerning which home market prices do not offer satisfactory guidance.

(b) Documentation. Whenever the investigation regarding the existence of dumping or the application on a particular case of provisions for anti-dumping duties must be based on information from the foreign manufacturers, considerable difficulties are encountered in establishing a reliable basis for findings, in view of the existing conflict of interests. The possibilities of obtaining a reliable authorization from an impartial official or semi-official institution differ greatly from one country to another.

(c) The time factor. Because of the difficulties in many cases to ascertain dumping, the investigations inevitably require a considerable length of time. Furthermore, it is desirable - inter alia to avoid a speculative rise in imports - to come to a result as soon as possible, since the injurious effects may increase rapidly in the course of the investigation.

(d) Injury requisite. In certain cases it is difficult to determine whether the injury requisite is met, particularly in cases of dumping that threaten to cause material injury to existing domestic industries or materially retard the establishment of such an industry.
7. **How is the extent of dumping defined?**

The right of the King-in-Council to decide upon the levying of anti-dumping and countervailing duties is based on authorizations given by the Parliament and extended from time to time. The authorizations are given in the form of Royal Ordinances, the latest of which was issued on 29 March 1957 (No. 84) and is valid until 30 June 1959. This Ordinance directly refers to the provisions of the GATT in the following terms:

"If, with regard to the importation of a merchandise, such conditions are at hand as warrant the levying of anti-dumping or countervailing duties in accordance with the provisions of the GATT, the King, may, when necessary, decree the levying of such duties, in conformity with said provisions."

The King-in-Council decides upon the levying of anti-dumping and countervailing duties through Proclamations with the necessary rules of application in each particular case.

8. **If the legislation provides for the determination of the dumping margin by the application of the under-mentioned criteria, how are the criteria defined?**

(a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country" (Article VI, paragraph 1(a)).

(b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade" (Article VI, paragraph 1(b)(i)).

(c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit" (Article VI, paragraph 1(b)(ii)).

See question 7.

9. **Does the legislation provide that criteria (b) above may be used only when (a) is not ascertainable and similarly that criteria (c) may be used only when (a) and (b) are not ascertainable?**

See questions 7 and 8.

10. **In the price calculations is provision made:***

(a) for differences in conditions and terms of sale;

(b) for differences in taxation; and

(c) for other differences affecting price comparability?

See question 7.
11. Are the calculations to be based on:

(a) the price of the same product from the same producers;
(b) the price of a similar product from the same producer;
(c) the price of a like product from other producers in the exporting country;
(d) average prices for like products in the exporting country; or
(e) prices for like products in a third country?

The Ordinance contains no express regulations on this subject. In principle, calculations should be based on (a); if this is impracticable, on (b); if this is also impossible, on (c) or (d), and if, finally, this cannot be done either, possibly on (e), which could then be interpreted to some degree as an indication on the "cost of production". It may be added that in practice conditions for comparison are dependent inter alia on whether a uniform product (raw material or semi-finished product) or a manufactured product with different kinds of finish is involved.

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

Yes (see question 7).

13. Is there provision for the levy of anti-dumping duties on:

(a) products imported from a country other than the country of origin; or
(b) products which are not themselves dumped (or subsidized) but which are made from products which have been dumped or subsidized in a third country?

(a) See questions 5(a) and 7.

(b) The problem has not been considered by the Swedish authorities.

14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

See question 7.

15. What relationship exists between the customs valuation system and the determination of prices for the application of anti-dumping duties?

In the cases where the ordinary duty is assessed on an ad valorem basis, the assessment price of the goods is presumed generally to be the c.i.f. price. This basis has also been applied in one of the two cases mentioned under question 5, for the calculation of the anti-dumping duty. In the other case mentioned, the assessment price was the f.o.b. price.
Determination of "normal value" on the other hand is made in accordance with Article VI of the GATT. There is thus no connexion between the method of valuation for ordinary duty purposes and the method for fixing anti-dumping duties.

16. Are anti-dumping duties applied only on selected products specified by law, decree, etc., or is the customs administration instructed to levy anti-dumping duties on all dumped imports?

Assessment of an anti-dumping duty is decided upon by a proclamation for each particular merchandise (see question 7). Thus, there is no general authority for the customs administration to levy anti-dumping duties.

Part III - The selection of items on which anti-dumping duties are to be levied

17. Are items placed on the list of products on which anti-dumping duties are to be levied only after investigation of a complaint by a domestic producer of injury caused by dumped imports?

There are no provisions on the subject, but in practice it is assumed that a request for the introduction of an anti-dumping duty shall be made by a domestic producer or association of producers, which claims to suffer injury as a result of dumping.

Concerning agricultural products, it is for the State Agricultural Marketing Board (whose task it is inter alia to administer price regulation for agricultural products) to follow import price developments with a view to detect possible dumping. If dumping is found and the injury requisite has been met, the Board shall report the matter to the King-in-Council, after consultation with the Customs Administration and the Board of Trade, and propose appropriate counter-measures.

18. (a) At what stage is a claim of injury investigated?
(b) Do these investigations take account of the effects of dumping or subsidization on a single producer, a branch of an industry, or the whole industry?

(a) No provision. Whether the existence and extent of injury shall be examined at the same time as or after the investigation concerning the presence of dumping as such is subject to circumstances in each case.

(b) No provisions. The Swedish authorities concerned are of the opinion that the injurious effect on the total national production of the merchandise involved should as a rule be taken into account when the anti-dumping legislation is applied. This view has prevailed in the two cases where anti-dumping duties have been introduced.
19. What is the procedure in the pre-selection stage:
   (a) investigation, (b) burden of proof, (c) decision, (d) appeal?

   (a) See 18(a).
   (b) The burden of proof that injurious dumping is at hand is, in principle, with the authorities.
   (c) By Royal Proclamation (see 7).
   (d) No appeal.

20. (a) Is the anti-dumping duty fixed in the proclamation? or
   (b) Has it only the effect of empowering the customs administration to levy an anti-dumping duty - leaving the final finding concerning the existence and extent of the dumping in the cases of the actual imports to the customs authorities?

   Only (b) has been applied.

   However, as question 22 will bring out, the function of the customs authorities is only to find out - through a comparison with the basic price - whether or not dumping is to be presumed, and, if so, to assess the duty, unless the interested party furnishes evidence indicating absence of dumping.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

   The proclamations had recourse to both systems.

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of anti-dumping duties?
   (b) Do the prices so laid down have the effect of limiting the extent of the anti-dumping duties which can be applied?

   (a) The proclamations so far issued have exempted from anti-dumping duties products the value of which exceeded a certain basic price, established as a result of investigations concerning the "normal value".

   (b) Yes, if the basic price is lower than the "normal value", which can be presumed to be usually the case, the anti-dumping duty is computed only as the difference between the import price and the basic price.
23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

The validity of proclamations so far issued on the levying of anti-dumping duties have not been limited in time. They remained in force until the King-in-Council repealed them.

Part IV - The administration of anti-dumping duties by customs authorities in respect of each individual consignment.

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

No.

25. If the normal value is to be determined by the administration, how is the necessary information obtained?

In practice the findings will unavoidably be based mainly on material presented by the importer or the foreign exporter. In some cases, material might also be collected or verified by the Swedish official representation abroad or by chambers of commerce and similar institutions.

26. If the injury caused or threatened is to be determined by the administration, how is this done?

The injury question is not considered by the customs authorities. It is examined and decided upon in the pre-selection stage before a proclamation for an anti-dumping duty is issued.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Previous experience will constitute a guidance.

28. What is the procedure in the assessment stage?

(a) burden of proof; or (b) appeal?

(a) Experience has shown that it will often be necessary, once a decision in principle - i.e. a Royal Proclamation - for the levying of an anti-dumping duty has been made, to presume the existence of dumping with respect to each relevant shipment as long as its price is lower than a certain figure, viz. the so-called basic price, which is determined in the course of the pre-selection investigation and subject to continuous review. If such a presumption were not made, there would be a danger that the general GATT rules could not be applied properly, and that goods would be detained by the customs
for long periods for administrative reasons. On the other hand, such a presumption might conceivably lead to the assessment of anti-dumping duties on shipments made at prices below the basic price but regarding which, nevertheless, no dumping was at hand. In order to provide for the exemption of such shipments from the assessment of anti-dumping duties, the authorities require evidence which can be obtained only from the importer, perhaps in consultation with the foreign exporter. Thus, in a certain sense, it could be said that the burden of proof is with the importer in the assessment stage.

(b) Administrative appeal.

29. (a) When dumping is suspected can the goods be cleared against security?
(b) How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

Goods can be cleared against security.

No particular regulation with a view to insure that the procedure does not require an unreasonable length of time has been thought necessary, in view of the efficiency which is generally required of the Swedish administration.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

Proclamations so far issued have provided that in those cases where the basic price fixed in the relevant proclamation (see question 22) is lower than the "normal value" the anti-dumping duty has been limited to the amount by which the basic price is higher than the import price. Due to the fact that the basic prices have been fixed with regard to the prevailing price in the country where the home market price is lowest, this system often leads to the result that only part of the real dumping margin has been offset.
Introduction

The United States has separate legislation for anti-dumping and countervailing duties. A description of the functioning of these laws, as transmitted by the Government of the United States, is appended (Appendix 1 - relating to anti-dumping provisions, Appendix 3 - relating to countervailing duty provisions). Furthermore in each case the legislation is systematically analysed in Sections A and B respectively.
PART I - GENERAL

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

No, but fundamentally similar (see point 7).

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on dumped (or subsidized) imports?

There is a special Anti-dumping Act (see point 7).

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI in so far as contracting parties are concerned?

The provisions are not wider in scope, but where the GATT refers to "Material injury" the United States legislation refers to "injury".

4. What problems of international trade have been dealt with by recourse to these provisions (commercial dumping, state subsidies, differential exchange rates, imports from state trading countries, etc.)?

Commercial dumping.

5. (a) What are the cases in which an anti-dumping duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

<table>
<thead>
<tr>
<th>Request</th>
<th>Product</th>
<th>Country</th>
<th>Date of Finding</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 March 1953</td>
<td>Hardboard</td>
<td>Sweden</td>
<td>26 August 1954</td>
</tr>
<tr>
<td>18 August 1954</td>
<td>Cast iron soil pipe</td>
<td>United Kingdom</td>
<td>27 October 1955</td>
</tr>
</tbody>
</table>

None of these findings has been rescinded with the exception of the finding concerning hardboard - which was partially rescinded.

(b) How many requests for the application of anti-dumping duties have been received from domestic producers since 1948?

96 (This figure includes all investigations whether initiated by complaint or by the government).
6. What are the special difficulties which have been encountered in applying the national anti-dumping legislation?

None in so far as the application of anti-dumping duties on the items indicated by decree is concerned.

There existed, however, certain difficulties regarding some of the terminology in the provisions related to the pre-selection stage. The difficulties were in part overcome by the change of the definition of fair value (a term which specifically relates to the pre-selection stages). These changes became effective in 1955, and may be found in Section 14.7 of the Customs Regulations (not reproduced). It should be noted that these changes led to speedier and more efficient action in the handling of anti-dumping cases. Furthermore, a Bill sponsored by the Treasury Department is pending (see paragraphs 21 and 22 of the United States Statement - Appendix I) which would make the corresponding changes in the Anti-dumping Law.

PART - NATIONAL LEGISLATION AND REGULATIONS

7. How is the extent of dumping defined?

The amount of dumping duty is determined on the one hand by the difference between the purchase price or exporter's sales price, (The "purchase price" is understood to be the price actually paid by the United States importer; the "exporters sales price" is an adjusted purchase price in cases where a special relationship exists between buyer and seller,) and on the other hand foreign market value or in the absence of such value the cost of production (Anti-dumping Act - see Appendix 2).

8. If the legislation provides for the determination of the dumping margin by the application of the undermentioned criteria, how are the criteria defined?

(a) "Comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country." (Article VI, paragraph 1(a)).

(b) "The highest comparable price for the like products for export to any third country in the ordinary course of trade." (Article VI, paragraph 1(b)(ii)).

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1 It is recognised that the term "pre-selection" is used in this analysis only to facilitate the description of the anti-dumping duty provisions and is related exclusively to the preliminary investigating stage leading to the publishing of a decree (Part III) preceding the action by the customs authorities.
USA

(c) "The cost of production of the product in the country of origin, plus a reasonable addition for selling cost and profit."
(Article VI, paragraph l(b)(ii)).

(a), (b) (both included in the term "foreign market value") and (c) in that order. These terms as defined in the United States legislation are very similar to the definitions used in Article VI of the GATT. (See Sections 205 and 206 of the Anti-dumping Act, Appendix 2).

9. Does the legislation provide that criteria (b) above may be used only when (a) is not ascertainable and similarly that criteria (c) may be used only when (a) and (b) are not ascertainable?

Yes; see above.

10. In the price calculations is provision made:

(a) for differences in conditions and terms of sale;
(b) for differences in taxation; and
(c) for other differences affecting price comparability?

Yes;

Ordinarily the foreign market value is calculated on an ex-factory basis and allowance is made in calculating the price to the United States for cost of shipping and other expenses incident to delivery of the merchandise, United States import duty, if included, and any internal taxes which have been rebated or not collected by reason of the merchandise being exported to the United States. Allowance is also made for trade or quantity discounts when comparing the price to the United States with that of home market or third country prices. The cost of the packing for the United States market is used in both cases to arrive at a packed price. (See Section 202(b) and (c), 203 and 204 - Appendix 2; further related provisions contained in the Customs Regulations are not reproduced.)

11. Are the calculations to be based on:

(a) the price of the same product from the same producers;
(b) the price of a similar product from the same producer;
(c) the price of a like product from other producers in the exporting country;
(d) average prices for like products in the exporting country; or
(e) prices for like products in a third country?

On (a), (b) and (c) in that order. If no information is available for the country involved under (a), (b) or (c) the customs administration (appraiser) is empowered to ascertain the value by all reasonable ways and means (Section 209 of the Anti-dumping Act - Appendix 2).
For procedure related to the fixing of the margin of dumping see paragraph 18 of Appendix I.

12. Is it laid down that anti-dumping duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

The term injury is not defined in the Anti-dumping Act. However, no anti-dumping duty can be levied without a decision by the Tariff Commission that such imports are injuring or are likely to injure domestic industry. The Commission usually holds public hearings during the course of its investigation, and all interested parties are given the opportunity to be heard. The importance that is attached to the determination of injury can be seen from the fact that from 1 October 1954 (at which time the authority to determine injury was given to the Tariff Commission) to 31 December 1956, only in one case, out of the six referred to the Tariff Commission, was injury to a domestic industry established.

13. Is there provision for the levy of anti-dumping duties on:

(a) products imported from a country other than the country of origin; or
(b) products which are not themselves dumped (or subsidized) but which are made from products which have been dumped or subsidized in a third country?

No special provision;

If a product is merely transshipped in bond from one country through another, and does not enter the commerce of the second country, then the price comparison is made between the price to the United States and the price of such or similar merchandise sold in the country in which the article was produced. If the product actually enters the commerce of the second country, whether or not it is processed there, the price comparison is made between the price to the United States and the price of such or similar merchandise sold in the country of exportation.

14. Do the laws and regulations permit the levy of anti-dumping duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

No.

15. What relationship exists between the customs valuation system and the determination of prices for the application of anti-dumping duties?

The value provisions for determining the dumping margin are entirely independent from the value provisions for ordinary customs duties, although the terminology in each case is closely related.
The "foreign value", normally declared on the invoice for ordinary customs purposes, is valuable information for determining the "foreign market value" under the Anti-dumping Act. Even though the valuation for ordinary customs purposes will - for most products - no longer be based on the "foreign value" as soon as the approved Customs Simplification Act 1956 becomes effective the prescribed invoice form in the future will probably continue to provide for a statement as to the "foreign value".

16. Are anti-dumping duties applied only on selected products specified by law decree, etc., or is the customs administration instructed to levy anti-dumping duties on all dumped imports?

Only on specified products.

PART III - THE SELECTION OF ITEMS ON WHICH ANTI-DUMPING DUTIES ARE TO BE LEVIED

17. Are items placed on the list of products on which anti-dumping duties are to be levied only after investigation of a complaint by a domestic producer of injury caused by dumped imports?

A dumping case can originate either by complaint from a domestic producer or by report from Customs officers.

18. (a) At what stage is a claim of injury investigated?

The injury is investigated before the decree is issued.

(b) Do these investigations take account of the effects of dumping or subsidization on a single producer, a branch of an industry, or the whole industry?

No general rule. In one instance, however, the Tariff Commission based its finding of injury on the effect of the imports to a "segment" of the relevant industry. It is not known if this creates a precedent.

19. What is the procedure in the pre-selection stage; (a) Investigation, (b) burden of proof, (c) decision (d) appeal?

(a) The investigations are carried out by the Treasury Department. If the Treasury Department finds there are sales at less than "fair value" the case is then certified to the Tariff Commission (see point 12) for the determination of injury.

(b) Burden of proof; importers, as well as all other interested parties, are given full opportunity to express their views in the pre-selection stage.
(c) The Secretary of Treasury issues the decision in the form of an officially published decree called finding.

(d) No appeal.

20. (a) Is the anti-dumping duty fixed in the proclamation, or
(b) has it only the effect of empowering the customs administration to levy an anti-dumping duty - leaving the final finding concerning the existence and extent of the dumping in the cases of the actual imports to the customs authorities?

Only (b) applies.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

The findings specify product and country. They might also specify exporters.

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of anti-dumping duties?
(b) Do the prices so laid down have the effect of limiting the extent of anti-dumping duties which can be applied?

No.

23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

Until revoked.

PART IV - THE ADMINISTRATION OF ANTI-DUMPING DUTIES BY CUSTOMS AUTHORITIES IN RESPECT OF EACH INDIVIDUAL CONSIGNMENT

24. Where the item on which an anti-dumping duty is to be levied has not been pre-selected, does the customs administration take action?

No.

In some instances, however, pending final decision, products against which a complaint has been filed are not appraised if there are reasonable grounds to suspect that dumping exists.
25. If the dumping margin is to be determined by the administration, how is the necessary information obtained?

The Customs officer determines the margin of dumping for each individual importation. He obtains the necessary information through the normal official channels. He can also use any relevant information obtained by the Treasury Department in the "pre-selection stage".

26. If the injury caused or threatened is to be determined by the administration how is this done?

The injury factor is exclusively determined by the Tariff Commission in the "pre-selection stage". Once determined, it applied to all shipments as long as the finding is in effect.

27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Yes, as long as the finding is in effect.

28. What is the procedure in the assessment stage; (a) burden of proof, (b) appeal?

(a) The burden of proof rests in the assessment stage (action by the Customs appraiser) with the government but importers have the right to make representations.

(b) The determination of the dumping margin by the appraiser is not subject to administrative appeal but is subject to an appeal to the Customs Courts (see Appendix 1, paragraph 18).

29. (a) When dumping is suspected can the goods be cleared against security? (b) How is it ensured that the length of time involved in the procedure for determining whether an anti-dumping duty is to be levied is not unreasonably long?

(a) Yes, against bond.

(b) Normally the necessary information is available and therefore there is no delay in the final appraisement of a product for which a finding has been issued. The delay may be longer during the time between the original complaint and the publication of the finding. However, the Treasury Department takes all necessary steps to expedite decisions.

30. Is the anti-dumping duty fixed at the full amount of the margin of dumping? If not, what criteria are taken into account in fixing a smaller duty?

The anti-dumping duties are always assessed at the full amount.
USA

Section B

COUNTERVAILING DUTIES

PART I - GENERAL

1. Do the provisions follow the wording of Article VI, or is a different terminology used?

No, but fundamentally similar (see point 7).

2. If the terminology is different, what are the provisions used to arrive at the levy of duties on subsidized imports?

Special provisions in the Tariff Act, 1930 (see point 7).

3. If the provisions are wider in scope than those of Article VI, how is it ensured that they are applied in conformity with Article VI in so far as contracting parties are concerned?

The provisions are not wider in scope.

4. What problems of international trade are dealt with by recourse to these provisions (state subsidies, differential exchange rates, imports from state trading countries, etc)?

Foreign export subsidizations of all types, including subsidizations through differential exchange rates.

5. (a) What are the cases in which a countervailing duty has been levied since 1948? Indicate the products and exporting countries involved and the period during which such duties were levied.

<table>
<thead>
<tr>
<th>Product</th>
<th>Country</th>
<th>Date of order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shelled almonds</td>
<td>Spain</td>
<td>21 October 1948 (no longer in effect)</td>
</tr>
<tr>
<td>Blue vein cheese</td>
<td>Canada</td>
<td>16 January 1953</td>
</tr>
<tr>
<td>Wool tops</td>
<td>Uruguay</td>
<td>6 May 1953</td>
</tr>
<tr>
<td>Cordage</td>
<td>Cuba</td>
<td>19 July 1954</td>
</tr>
</tbody>
</table>

In addition to these cases, of the findings made prior to 1948, the following (partly modified) are still applicable:
USA

Product
Sugar content of certain articles, Butter,
Fortified wines ...
Cheddar cheese ...
Butter ...
Spirits, silk and silk articles, sugar ...
Spirits ...

Country
Australia
Canada
Denmark
United Kingdom
Ireland

(b) How many requests for the application of countervailing duties have been received from domestic producers since 1948?

62. (This figure includes all investigations whether initiated by complaint or by the government.)

6. What are the special difficulties which have been encountered in applying the national countervailing duty legislation?

None.

PART II - NATIONAL LEGISLATION AND REGULATIONS

7. How is the amount of the countervailing duty defined?

The countervailing duty is equal to the amount of the bounty or subsidy which has been paid or bestowed. It does not apply to merchandise which is not dutiable. - Section 303 of the Tariff Act (Appendix 4).

Points 8 - 11 inclusive are not applicable to countervailing duties

12. Is it laid down that countervailing duties should be limited to cases where "material injury" has been caused or threatened, or where the establishment of an industry is materially retarded? If so, what are the criteria?

The countervailing duty provisions permit the levy of countervailing duties regardless of whether or not there is any injury (see also paragraph 9, Appendix 3).

13. Is there provision for the levy of countervailing duties on:

(a) products imported from a country other than the country of origin; or
(b) products which are not themselves subsidized but which are made from subsidized products?

Countervailing duties are levied in all instances where the product itself or part thereof has been subsidized, regardless of whether the subsidy was granted in the exporting or in a third country (see also paragraph 12, Appendix 3).
14. Do the laws and regulations permit the levy of countervailing duties in the interest of another contracting party? (Article VI, paragraph 6(b)).

No.

Point 15 is not applicable to countervailing duties.

16. Are countervailing duties applied only on selected products specified by law, decree, etc., or is the customs administration instructed to levy countervailing duties on all subsidized imports?

Only on specified products.

PART III - THE SELECTION OF ITEMS ON WHICH COUNTERVAILING DUTIES ARE TO BE LEVIED

17. Are items placed on the list of products on which countervailing duties are to be levied only after investigation of a complaint by a domestic producer?

A countervailing duty case can originate either by complaint from a domestic producer or by report from customs officers.

18. (a) At what stage is a claim of injury investigated?

(b) Do these investigations take account of the effects of subsidization on a single producer, a branch of an industry, or the whole industry?

Since injury does not play a part in countervailing duty no such investigation is made.

19. What is the procedure in the pre-selection stage; (a) Investigation, (b) burden of proof, (c) decision, (d) appeal?

(a) Investigation by the Treasury Department.

(b) Burden of proof. The burden of proof rests with the government but all interested parties are given the opportunity to express their views in the pre-selection stage.

(c) By an officially published decree (called order) issued by the customs authorities.

(d) There is no specific provision for judicial review of a finding under the countervailing duty law, but such findings have been on occasion the subject of an appeal to the courts.
20. Is the countervailing duty fixed in the proclamation, or has it only the effect of empowering the customs administration to levy a countervailing duty - leaving the final finding concerning the existence and extent of the subsidization in the cases of the actual imports to the customs authorities.

The order specifies either the countervailing duty or the rule for calculating or estimating such an amount.

21. Is the duty applied to all imports of the like product, or only to imports from specified countries, or only to purchases from specified exporters?

The orders specify product and country. They might also specify exporters.

22. (a) Does such a proclamation lay down prices so as to permit the import of more expensive products without the application of countervailing duties?

(b) Do the prices so laid down have the effect of limiting the extent of the countervailing duties which can be applied?

No.

23. Is the validity of a proclamation limited in time or does it remain in force until repealed?

Until revoked.

PART IV - THE ADMINISTRATION OF COUNTERVAILING DUTIES BY CUSTOMS AUTHORITIES IN RESPECT OF EACH INDIVIDUAL CONSIGNMENT

24. Where the item on which a countervailing duty is to be levied has not been pre-selected, does the customs administration take action?

No; action can only be taken after the order becomes effective.

25. If the subsidy is to be determined by the administration, how is the necessary information obtained?

All necessary determinations are made in the pre-selection stage.

26. If the injury caused or threatened is to be determined by the administration, how is this done?

No injury requirement.
27. Are the findings on one occasion applied to further imports of like products (from the same country and the same exporter)?

Yes, as long as the order is in effect.

28. What is the procedure in the assessment stage; (a) burden of proof, (b) appeal?

(a) All necessary determinations are made in the pre-selection stage.

(b) No appeal in the assessment stage, due to the fact that the amount of countervailing duty is fixed in the decree ("order").

29. When subsidization is suspected can the goods be cleared against security? How is it ensured that the length of time involved in the procedure for determining whether a countervailing duty is to be levied is not unreasonably long?

No delay. Countervailing duties are collected like ordinary duties.

30. Is the countervailing duty fixed at the full amount of the margin of subsidization? If not, what criteria are taken into account in fixing a smaller duty?

Countervailing duties are always assessed at the full amount.
USA

APPENDIX 1

Statemor of the United States concerning

ANTI-DUMPING DUTIES

1. The Anti-Dumping Act was originally enacted in 1921, and was most recently amended by the Customs Simplification Act of 1954. As amended, it is published in 19 United States Code, sections 160-173.

2. Briefly, the Anti-Dumping Act provides that a finding of dumping shall be made when it has been established that:

   (a) foreign merchandise is, or is likely to be, sold to the United States at a price less than "fair value" and

   (b) an American industry is, or is likely to be, injured, or is prevented from being established; because of importation of such merchandise into the United States.

3. The Treasury Department determines whether there are sales at less than fair value. If sales at less than fair value are found, the case is then referred to the Tariff Commission which decides the question of injury. If the Tariff Commission determines that there is injury, a finding is announced, and dumping duties are assessed.

4. A dumping case can originate either by complaint from a domestic producer or by report from Customs officers. In either event, the complainant or Customs officer is required to submit all information in his possession, or readily available to him, with respect to a detailed description of the merchandise; port or ports of entry; data as to values and prices, taxes, discounts, incidental costs such as packing and freight; conditions or restrictions attached to sales in the country of exportation; and existence or likelihood of injury to an established or prospective industry in the United States.

5. In most cases the information so submitted is not sufficient to arrive at a conclusion. This is particularly true in the case of complaints by domestic producers, since price data and conditions of sale in the foreign market are not usually available to these sources. It becomes necessary then to obtain further information, and this is usually done in one of two days. If the case is not too complicated and there is just one item or only a few items involved, produced by only one or two manufacturers, then it may be possible to obtain the needed facts through the Embassy of the country involved. However, the usual method is to obtain the information by means of an inquiry conducted in the country of exportation by United States Treasury representatives or consular officers. All information submitted in confidence during the course of any such inquiry is, of course, kept confidential.
6. The Treasury Department affords all interested parties the right to be heard or to submit evidence during the course of the investigation. This information is ordinarily submitted in confidence, and for this reason, rarely, if ever, is preference expressed for public hearings.

7. In general, once the validity of the complaint has been established, instructions are issued to all customs officers to withhold appraisement of the commodity undergoing consideration, and the importers are notified that a question of dumping has been raised. This does not mean that the merchandise is denied entry or will not be released from Customs custody. It simply means that the final determination of the amount of duties to be assessed is delayed pending the outcome of the dumping question.

8. If, during the proceedings, it develops that there are reasonable grounds to suspect that the merchandise is being sold at less than fair value, action is taken under section 201(b) of the Anti-Dumping Act. Importers are notified that sales at a dumping price are believed or suspected, and collectors of customs may, if they are not satisfied that the bond under which the entry was filed is sufficient, require an additional bond to cover possible dumping duties before the merchandise is released from Customs custody. Appraisement is withhold until the question of dumping is settled.

9. The term fair value is defined in section 14.7 of the Customs Regulations. Normally, fair value is based on sales for home consumption in the country of exportation. If, however, it is determined that the quantity sold in the home market is so small, in relation to the quantity sold for exportation otherwise than to the United States, as to be an inadequate basis for comparison, fair value is based on sales for export to countries other than the United States. If the merchandise is not sold in the home market or to third countries, then comparison is made with cost of production.

10. Sales are made at less than fair value if the price to the United States is less than the price in the home market, or to third countries, as the case may be. The comparison is ordinarily made on an ex-factory basis and allowance is made in calculating the price to the United States for cost of shipping and other expenses incident to delivery of the merchandise, United States import duty, if included, and any internal taxes which have been rebated or not collected by reason of the merchandise being exported to the United States. Allowance is also made for trade or quantity discounts when comparing the price to the United States with that of home market or third country prices. The cost of the packing for the United States market is used in both cases to arrive at a packed price.

11. The price to the United States may be calculated either on the basis of "purchase price" or "exporter's sales price", depending on the relationship between buyer and seller. If the transaction is an outright purchase by the importer and there is no connexion, financial or otherwise, between the contracting parties, purchase price is used, adjusted as indicated above. Purchase price is compared to home market price or the price to third countries at or about the time the purchase is made by the importer.
12. If, however, a relationship exists between the importer and exporter, such as one being a subsidiary of the other or interlocking stock control, then the price to the United States is calculated on the basis of exporter's sales price. In this case, the starting point is the price at which the merchandise is resold in the United States. From this price is deducted, in addition to the allowances outlined above, the commissions and selling expenses incurred in selling the product in the United States. When exporter's sales price is used, comparison with home market price or third country price is made at or about the time of exportation to the United States.

13. When possible, the article sold to the United States is compared to the identical article sold in the home market, or to third countries, as the case may be. If such an article is not sold in the home market or to third countries, then recourse is had to a like or similar article, with allowances made for differences in construction or production and costs of manufacture.

14. Basically then, the question of whether sales are being made at less than fair value is a mathematical computation to determine if the price to the United States is less than the home market price or the price to third countries, or the cost of production, as the case may be.

15. If it is determined that there are sales at less than fair value, the case is referred to the Tariff Commission to decide the question of injury. The term injury has never been defined with respect to the Anti-Dumping Act, and the Tariff Commission must decide in each case whether the domestic industry is being, or is likely to be, injured, or is being prevented from being established. The Commission usually holds public hearings during the course of its investigation, and all interested parties are given the opportunity to be heard. From 1 October 1954, to 31 December 1956, during which period injury determinations were made by the Tariff Commission, six cases were referred to the Commission. In only one case was injury to a domestic industry found.

16. From 1 January 1934 (at which time detailed records on the Anti-Dumping Act were begun to be kept) until 31 December 1956, 198 dumping cases were processed. A finding of dumping was made in eight of these cases.

17. A finding of dumping applies to the named commodity, and may apply to one or more manufacturers, or to all manufacturers, of the commodity in the involved country. A finding of dumping remains in effect until rescinded by the Secretary of the Treasury. Recession ordinarily takes place only after there is satisfactory evidence that there are no longer sales at less than fair value or likelihood of such sales.

18. Dumping duties are assessed retroactively on all unappraised entries dating back to 120 days before the question of dumping was raised by or presented to the Secretary of the Treasury. The amount of dumping duty is determined by the difference between the purchase price or exporter's sales price and foreign market value or cost of production, as the case may be. The determination of these values
by the appraiser and the action of the collector in assessing special dumping
duty are subject to the same right of appeal and protest in the Customs Courts
as in the case of appeals and protests relating to ordinary customs duties.
The burden of proof in such actions is on the importer.

19. Dumping duties are not levied by the United States in the interest of third
countries. There is no provision in the Anti-Dumping Act for such an action,
and any attempt to assess such duties would be unenforceable.

20. If a product is merely transhipped from one country through another, and does
not enter the commerce of the second country, then the price comparison is made
between the price to the United States and the price of such or similar merchandise
sold in the country in which the article was produced. If, however, the
transhipped product actually enters the commerce of the second country, the price
comparison is made between the price to the United States and the price of such
or similar merchandise sold in the country of transshipment. In the case of
processed products, the article is considered to have entered the commerce of the
country in which the processing occurs.

21. There are presently pending before Congress two bills amending the Anti-
Dumping Act. The bill sponsored by the Treasury Department is designed to
accomplish two objectives. The first of these is to bring into conformity the
definition of foreign market value as provided for in the Act and fair value
as defined in the Regulations. This will lead to greater speed and efficiency
in handling dumping cases.

22. The second objective is to conform the value definitions in the Anti-Dumping
Act to the value definitions of the Customs Simplification Act of 1956. It is
under the latter Act, which amends section 402 of the Tariff Act of 1930, that
the values for ordinary duty purposes are determined. Since through the years
the definitions in the Anti-Dumping Act and section 402 have gone hand-in-hand, it
is deemed advisable that they continue to do so. This, too, will lead to greater
speed and efficiency, since the same officials who interpret the decisions under
one law will interpret them under the other.

APPENDIX 2

ANTI-DUMPING ACT, 1921
as amended by sections 301 and 302 of the
Customs Simplification Act of 1954 (42 Stat. 11;

Dumping Investigation

§ 201. Investigations by Secretary of Treasury; notice to Secretary by appraisers
as to sales price of imported articles; withholding appraisement.
Whenever the Secretary of the Treasury (hereinafter called the 'Secretary') determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a 'finding') of his determination and the determination of the said Commission. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign-market value (or, in the absence of such value, than the cost of production), he shall forthwith authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to the Secretary or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

**Special Dumping Duty**

202. Amount of duty to be collected; determination of foreign market value of goods.

(a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so
made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the cost of production) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) If it is established to the satisfaction of the appraising officers that the amount of such difference between the purchase price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such a similar merchandise is sold or freely offered for sale to all purchasers for exportation to the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign-market value for the purposes of this section.

(c) If it is established to the satisfaction of the appraising officers that the amount of such difference between the exporter's sales price and the foreign-market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then due allowance shall be made therefor in determining the foreign-market value for the purpose of this section.

**Purchase Price**

203. Purchase price.

For the purpose of this section and sections 201-212 of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not
included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

Exporters Sales Price

204. Determination of exporter's sales price.

For the purpose of sections 201-212 of this title, the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

Foreign-Market Value

205. Determination of foreign-market value.

For the purposes of sections 201-212 of this title, the foreign-market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary
course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign-market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign-market value for the purposes of said sections no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

Cost of Production

206. Cost of production.

For the purposes of sections 201-212 of this title, the cost of production of imported merchandise shall be the sum of:

1. The cost of materials of, and of fabrication, manipulation or other process employed in manufacturing or producing, identical or substantially identical merchandise, at a time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

2. The usual general expenses (not less than 10 per centum of such cost) in the case of identical or substantially identical merchandise;

3. The cost of all containers and coverings, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

4. In addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) equal to the profit which is ordinarily added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular merchandise under consideration.

Exporter

207. Exporter defined.

For the purposes of sections 201-212 of this title, the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States.
(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

Oaths and Bonds on Entry

208. Oath and bond of person for whose account merchandise is imported before delivery thereof.

In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided in section 201 of this title, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the said Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) That he will report to the collector the exporter's sales price of the merchandise within thirty days after such merchandise has been sold or agreed to be sold in the United States; (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by sections 201-212 of this title, upon such merchandise; and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.
209. Appraisal and report to collector.

In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided in section 201 of this title, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate and appraise (any invoice or affidavit thereto or statement of cost of production to the contrary notwithstanding) and report to the collector the foreign-market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of sections 201-212 of this title.

Appeals and Protests

210. Appeals, etc., from determinations of appraisers.

For the purposes of sections 201-212 of this title, the determination of the appraiser or person acting as appraiser as to the foreign-market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connexion with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

Drawbacks

211. Special duties treated as regular duties.

The special dumping duty imposed by sections 201-212 of this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

Short Title

212. Citation.

Sections 201-212 of this title may be cited as the 'Anti-Dumping Act, 1921'.
213. Definitions.

When used in sections 201-212 of this title:

The term 'person' includes individuals, partnerships, corporations, and associations; and

The term 'United States' includes all territories and possessions subject to the jurisdiction of the United States, except [the Philippine Islands, the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone].

214. Rules and regulations.

The Secretary shall make rules and regulations necessary for the enforcement of sections 201-213 of this title."
A countervailing duty case can arise either on the basis of information supplies by Customs officers or persons outside the Customs Service. In either event, the information supplied must contain a full statement of the reason for the belief that a bounty or grant is being paid or bestowed on the article in question; a detailed description or sample of the merchandise; and all pertinent facts obtainable as to any bounty or grant being paid or bestowed with respect to such merchandise.

If the Commissioner of Customs is satisfied that the complaint is valid, an investigation is undertaken to obtain the needed facts. Very often, the Embassy of the country involved is asked for information, particularly if there is a question of interpretation of a tax law or decree. In other cases, a United States Treasury representative or consular officer in the foreign country concerned will ask appropriate representatives of that country for information. At all times during the course of the inquiry, interested parties are given the opportunity to be heard.

Appraisement of the merchandise under consideration is not withheld while the investigation is going on, nor is the merchandise denied entry or release from Customs custody. The reason for this is that countervailing duties are not assessed retroactively. Under present administrative practice, a countervailing duty finding applies only to merchandise entered or withdrawn for consumption thirty days after the date of publication of the finding in the weekly Treasury Decisions.

A bounty or grant may be bestowed directly or indirectly. A direct bounty or grant consists of giving the manufacturer or exporter a cash payment in connexion with the manufacture or export of the merchandise. In such a case, countervailing duty is levied in an amount equal to the cash payment. If the bounty or grant is bestowed indirectly, it becomes a question of determining the amount and the countervailing duty is then levied in that amount.

Remission of internal taxes borne by a product is one method by which a bounty or grant can be bestowed indirectly. If the remission does not exceed the amount of taxes previously paid, however, then such remission is not considered a bounty or grant.

A finding of injury to a domestic industry is not a requisite for the imposition of countervailing duties, since there is no provision for such a finding in the law. Consequently, the question of injury is not considered in the determination of whether or not to countervail.

Once it has been established that a bounty or grant has been bestowed, a countervailing duty order is issued by the Commissioner of Customs, with the approval of the Secretary of the Treasury. The order describes the merchandise, designates the country or area in which it is produced or from which it is exported, and declares the ascertained or estimated amount of the bounty or grant or a rule for calculating or estimating such amount. The finding remains in effect until revoked by order of the Secretary of the Treasury. Revocation takes place only after it has been conclusively proven that the bounty or grant is no longer being paid.
From 1 May 1934, to 31 December 1956 (the records prior to this period are not complete) 138 countervailing duty cases were processed. Of these, twenty-six resulted in a finding of countervailing duty. There are currently in effect countervailing duty orders covering twelve commodities from seven countries.

Section 303 provides that countervailing duty shall apply whether the article is imported directly from the country of exportation or otherwise, and whether the article is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise. Obviously then, transhipped or processed products are subject to countervailing duty the same as though shipped from the original country of production and in the original condition.

There is no provision in section 303 for levying countervailing duties in the interest of third countries, and any attempt to do so would be unenforceable. There is no specific provision for judicial review of a finding under the countervailing duty law, but such findings have been on occasion the subject of an appeal to the courts.

There are no bills pending before Congress to amend the countervailing duty law.

APPENDIX 4

COUNTERVAILING DUTY LAW
(Tariff Act of 1930, section 303; 19 U.S.C. 1303)

"Whenever any country, dependency, colony, province, or other political sub-division of government, person, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political sub-division of government, and such article or merchandise is dutiable under the provisions of this Act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid in all such cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or
grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties."

REGULATIONS UNDER COUNTERVAILING DUTY LAW

See L/479/Add.9 page 2.
ANNEX 1

NORWEGIAN LEGISLATION

1. Rules included in the introductory Provisions to the Customs Tariff:

I. For the purposes of this paragraph dumping is understood to be the importation or introduction into commerce of a foreign product:

(a) at a price which is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country; or,

(b) in the absence of such domestic price, is less than either

(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in transportation costs and in taxation, and for other differences affecting price comparability.

II. If the King determines that dumping takes place and that it causes or threatens material injury to domestic industry or materially retards the establishment of such industry, he may provide for the levy of an anti-dumping duty on the product in question.

To counteract injury or retardation of the sort mentioned above, the King may provide for the levy of a countervailing duty on a foreign product on which, in the King's opinion, directly or indirectly, a bounty or subsidy has been granted for its manufacture, production or export, including any special subsidy for its transportation.

III. The anti-dumping duties levied shall not be greater in amount than what is considered to correspond to the margin of dumping, i.e. the difference between the dumping price and the comparable price, as defined in section I.

No countervailing duty shall be levied in an amount exceeding the bounty or subsidy supposed to have been granted.

IV. In so far as the King considers it useful, he may provide for the levy of duties in accordance with this paragraph on one or more specified products or kinds of products, on products from one or more specified exporters or on products from one or more specified countries.

Anti-dumping and countervailing duties may also be levied as a preliminary measure until further information is at hand.
"V The King may authorize the Ministry of Customs to establish administrative regulations to bring into effect the decisions relating to duties levied in accordance with this paragraph, as well as regulations dealing with the repayment of anti-dumping or countervailing duties.

"VI Any decisions to levy a duty provided for in this paragraph shall without delay be submitted to the Storting (Parliament) with full reasons for the action.

"2. **Law on the Customs Administration, 22 June 1928 as amended**

Paragraph 162a

"When a decision has been taken to levy an anti-dumping or countervailing duty on a product, the King or the person he authorizes, may decide that such products or similar products may pass the customs only if the importer gives the customs authorities a written declaration on the price and origin of the product and on other matters of interest for customs purposes.

"The Ministry of Customs establishes regulations regarding the form and content of such declarations and regarding the documents required to substantiate the information given.

Paragraph 162b

"When the levy of an anti-dumping or countervailing duty has been decided or is taken into consideration, the Ministry of Customs may seek further information on prices, production, sale profit and other matters concerning such products or similar products, foreign as well as national.

"Any person importing, producing, manufacturing or selling such products is bound by law to give such information. Regardless of the provisions ensuring secrecy the following authorities are equally bound in duty to give such information:

(a) authorities responsible for controlling that the rules laid down in the law on prices, profits and competition of 26 June 1953 are observed;

(b) authorities concerned with the regulation and control of imports and exports.

"The Ministry has the right to examine books of account, business documents, minutes of board meetings etc. If necessary the intervention of the police to ensure the surrender of such documents may be requested.
Paragraph 162c

"Any person who, in the course of his enquiries concerning anti-dumping or countervailing duties, receives information on production or business secrets or other matters not generally known shall, with the limitations which his handling of the case implies or which result from other regulations or laws, keep the information received secret. He may not use such information in his business.

Paragraph 165

"Any person who in conflict with the rules laid down in paragraphs 162a or b or with provisions based on these paragraphs makes an incorrect declaration, gives incorrect information or presents false proofs, may be fined or imprisoned for a period not exceeding three months."
Paragraph 15 of the introductory provisions of the Norwegian customs tariff provides for the levying of anti-dumping and countervailing duties. The provisions, which emanate from those contained in Article VI of the General Agreement, came into force as from 1 December 1954. Complaints against dumping are in the first instance placed before a consultative committee, "The anti-dumping committee", composed of governmental representatives, supplemented with members representing national federations of industry, trade and labour. The committee submits a basic report with recommendations to the Ministry of Finance which advises the Chief Executive on what further action is to be taken. Anti-dumping and countervailing duties are, on the advice of the Ministry of Finance, imposed by Royal Decree, specifying the article subject to duty. In applying anti-dumping and countervailing duties, the Ministry of Finance is obliged to make immediate notification to Parliament, which can withdraw or alter the duty.

The Norwegian provisions aim at counteracting the so-called price-dumping (including export subsidies) but not dumping resulting from monetary fluctuations or social dumping. The definition of dumping is identical to that of Article VI (1) in the General Agreement. The anti-dumping duty is limited to the margin of dumping and the countervailing duty to the premium or the subsidy granted. The criteria for determining the injury to the national industry are approximately the same as those contained in the General Agreement. The existing rules do not, however, permit the levying of anti-dumping duty in the interest of a third country, nor do they contain special rules for import from State-trading countries.

Since the enactment of the law in 1954, the Ministry of Finance has received approximately fifteen complaints of dumping, but no anti-dumping duty has so far been imposed on any article. Cases have existed where such a step could have been justified, but for various reasons the Ministry has not found it advisable to bring such special duties into effect. The Ministry of Finance has thus up to now refused to concede to the claims for anti-dumping duties from the national producers. The reason for this does not only consist in judging whether the conditions of the law have been fulfilled, but also in the fact that the application of such duties has met with considerable administrative difficulties.

The consideration of most of the complaints which by their nature did not require immediate action, was in fact delayed due to the lack of an appropriate administrative body to be charged with the investigation. As this body "The anti-dumping committee" was set up this spring, several complaints will be examined in the near future.
In three of the cases for complaint the authorities found it, however, unnecessary to apply an anti-dumping duty as long as the products in question were subject to quantitative restrictions for balance-of-payments reasons.

In two cases the newly introduced anti-dumping legislation proved its preventive effect by bringing the foreign dumping enterprises to initiate negotiations with the Norwegian producers, negotiations which finally led to a satisfactory settlement of the question.

For one group of articles anti-dumping duties were considered not to be the right measure to apply as trade aspects of a general nature between Norway and the exporting countries were involved.

In two cases, where export premiums were granted, the Norwegian authorities abstained from imposing countervailing duties because the methods employed in the exporting countries were approved by existing international organizations.

Concurrently special factors relating to the individual commodities made it difficult to classify the low-priced imports as dumping. When representations were made to the enterprises suspected of dumping these maintained for instance that the difference in quality, pattern and equipment were of such a nature as to justify a lower price on the export market.

The diverging conditions of sale have also been difficult to estimate in relation to the difference between the export price and the home market price.

Dual prices on raw materials constitute sometimes a subsidy to the home producers of finished products and ought to be met by countervailing duties.

The primary basis for comparison according to the Norwegian rules is the home market price for like products in the exporting countries. If such a price does not exist, a choice can be made between the export price to a third country and the price based on the cost of production with certain supplements in the country of origin. When comparing the prices, difference in the conditions of sale and delivery, of credit, taxation and other relevant factors, must be taken into consideration. The effect of these factors on the difference of prices has been difficult to measure.

The term "comparable prices" in the Norwegian legislation - which is extracted from the General Agreement - is not a synonymous expression and has caused difficulties of interpretation. Should therefore "the comparable prices, in the ordinary course of trade for the like product destined for home consumption in the exporting country" be seen in relation to the individual export price of the article, or should the general price level for the article in the exporting country be used as a basis. Here the question arises as to whether one can use the price for a similar ("similar") product. This should be the case if the exporter has made minor changes in the export article compared with
the home market article in order to avoid a direct comparison of prices, or
if the export article is sold on the home market at the time of exportation
at the same low price as for export, but only in very small quantities, in
order to conceal the dumping.

An infallible method for the ascertainment of the home market price in
the country of origin is hard to conceive, especially if the article is subject
to heavy price fluctuations. The Norwegian authorities are inclined to assume
that the determination of prices ought to take place in such a way that the
prices of the article in question at (or around) the time of sale are adjusted
to a uniform standard, taking into account the difference in quantity, equipment,
conditions of sale, taxation, etc. On the basis of fixed (concrete) prices a
standard price must be decided on (which could be called "the normal home market
price"). This price will thus appear as an average of the relevant diverging
prices. It is admitted that this price in many cases cannot be accurately
calculated.

Where import from State-trading countries is concerned, the consideration
of dumping complaints has given rise to special problems. The authorities
have in these cases found it extremely difficult to obtain sufficient material
to determine the "normal value" of the product - whether one wishes to base the
comparison on the home market price, the price of production or the export price
to a third country. As the fixing of prices in these countries takes place
according to totally different principles than in countries with a private
enterprise economy, and frequently without direct connexion with the actual cost
of production, the "normal value" defined according to the usual criteria cannot
give the correct basis for comparison.

Normally the claim for an anti-dumping duty is made by those producers who
suffer from the dumping. In Norway the authorities may, however, take the
matter up ex officio.

In most cases the authorities will investigate as a primary condition
whether the claim of injury has been fulfilled before the actual question of
dumping is taken up. These investigations can, however, be carried out
simultaneously. Consideration might in particular cases be given to damage
which has been caused to single producers if the size of their production (also
relatively) is sufficiently important (interpretation of the term "industry" in
paragraph 6 of Article VI).

Anti-dumping and countervailing duties can be applied to one particular
article or to one category of articles from one or more exporters in one country
or to a particular article or articles from one or more countries. The decision
cannot be given effect for more than the current fiscal year (1 July to 30 June)
without being extended by a new Royal Decree.
In carrying out a decision to apply an anti-dumping duty, the local customs authorities will primarily have to determine the import price for the individual consignments - in some cases reduced to price ex factory or f.o.b. As mentioned above one has assumed that it will be necessary to fix certain basic prices for each particular quality of an article and to collect the difference between the import price and this basic price as anti-dumping duty. These individual decisions can be brought before the central administration. This method might go slightly beyond the obligations arising from a strict interpretation of the rules contained in Article VI, but in the case of a small but wide-stretched country with a scattered local customs administration this system becomes more or less necessary.

The basic price system implies that when one case of dumping has taken place and a decision has been made to levy an anti-dumping duty, based on the basic price, dumping is presumed also to exist in the case of subsequent imports of the article from the same country if the import price is found to be lower than the basic price. The importing country will therefore have to prove, or make it appear probable, that dumping has taken place, but for subsequent imports the burden of proof is shifted to the enterprise charged with the dumping. The basic prices are presumed to be kept under constant review and subject to revision.
ANNEX 3

UNITED KINGDOM LEGISLATION

The Government of the United Kingdom has transmitted for distribution to the contracting parties the text of the Customs Duties (Dumping and Subsidies) Act of 1957, as follows:

"An Act to authorize the imposition of duties of customs where goods have been dumped or subsidized, and for connected purposes. (17 April 1957)"

.....

"... with a view to affording protection against dumping and subsidies affecting imported goods ..."

.....

1. (1) Where it appears to the Board of Trade -

(a) that goods of any description are being or have been imported into the United Kingdom in circumstances in which they are under the provisions of this Act to be regarded as having been dumped, or

(b) that some Government or other authority outside the United Kingdom has been giving a subsidy affecting goods of any description which are being or have been imported into the United Kingdom,

and that, having regard to all the circumstances, it would be in the national interest, they may exercise the power conferred on them by this Act to impose and vary duties of customs in such manner as they think necessary to meet the dumping or the giving of the subsidy:

Provided that, where the Board of Trade are not satisfied that the effect of the dumping or of the giving of the subsidy is such as to cause or threaten material injury to an established industry in the United Kingdom or is such as to retard materially the establishment of an industry in the United Kingdom, the Board shall not exercise that power if it appears to them that to do so would conflict with the obligations of Her Majesty's Government in the United Kingdom under the provisions for the time being in force of the General Agreement on Tariffs and Trade concluded at Geneva in the year nineteen hundred and forty-seven.

(2) For the purposes of this Act imported goods shall be regarded as having been dumped -

(a) if the export price from the country in which the goods originated is less than the fair market price of the goods in that country, or
(b) In a case where the country from which the goods were exported to the United Kingdom is different from the country in which they originated, -

(i) if the export price from the country in which the goods originated is less than the fair market price of those goods in that country, or

(ii) if the export price from the country from which the goods were so exported is less than the fair market price of those goods in that country.

(3) References in this Act to giving a subsidy are references to giving, directly or indirectly, a bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods or to something else), and include -

(a) the giving of any special subsidy on the transport of a particular product, and

(b) the giving of favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export, but do not include the application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

"2. (1) The power which the Board of Trade may exercise under this Act is a power by order to impose on goods of a description specified in the order a duty of customs chargeable on the import of the goods into the United Kingdom at a rate specified in the order.

(2) The matters by reference to which the description of goods in an order is framed shall include either the country in which the goods originated or the country from which the goods were exported to the United Kingdom.

(3) Subject to the provisions of the last foregoing subsection, an order under this section may include such provisions with respect to the description of the goods chargeable with duty and with respect to the cases in which duty is chargeable as may appear to the Board of Trade to be required for the purposes of this Act and, in particular,

(a) provisions limiting the description of the goods by reference to the particular persons or organisations by whom the goods were produced or who were concerned with the production of the goods in some specified manner,
(b) provisions defining the rate of duty by reference to value or weight or other measure of quantity,

(c) provisions directing that duty be charged for any period or periods, whether continuous or not, or without any limit of period, or at different rates for different periods or parts of periods, and

(d) in connexion with the commencement, variation or termination of a duty, provisions authorizing repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.

(4) Any duty chargeable under this Act on any goods shall be chargeable in addition to any other duty of customs for the time being chargeable thereon and, notwithstanding the provisions of subsection (2) of section one of the Safeguarding of Industries Act, 1921, or of paragraph (a) of subsection (2) of section one of the Import Duties Act, 1932, or of any other enactment (including, unless the contrary is expressly provided, any future enactment) the charge of duty under this Act shall not affect liability to customs duty chargeable under any other Act or the amount of any such duty.

(5) Section two hundred and fifty-nine of the Customs and Excise Act, 1952 (which charges duty on imported composite goods by reference to any dutiable goods used in their manufacture), shall not apply to a duty under this Act.

"3. (1) Where it appears to the Board of Trade that relief under this section should be available as respects a duty imposed by an order under this Act (being an order made to afford protection against dumping) they may, if they think fit, in that or a subsequent order under this Act apply the provisions of this section in relation to the duty.

(2) Where this section applies in relation to any duty, the importer of any goods chargeable with the duty as being goods originating in or, as the case may be, exported from a specified country may apply to the Board of Trade for relief from the duty on those goods.

(3) If on an application so made the Board of Trade are satisfied that the export price of the goods from that country with the amount of the duty added to it exceeds the fair market price of the goods in that country, the Board shall notify the Commissioners of Customs and Excise of the amount of the excess, and the Commissioners shall remit or repay the duty up to that amount.

(4) An application under this section as respects any goods shall not be made more than six months after the duty has been paid on the goods, and in connexion with any such application the applicant shall furnish such information and evidence as the Board of Trade may require from him for ascertaining the said export price or fair market price.
(5) The foregoing provisions of this section shall have effect in relation to a duty imposed by an order under this Act (being an order made to afford protection against the giving of a subsidy) as if references to the fair market price in a country were references to the export price from that country increased by such amount (if any) as may be necessary to offset the effect of the giving of the subsidy.

(6) If a person for the purposes of an application under this section-

(a) makes any statement which is false in a material particular, or

(b) produces any account, estimate, return or other document which is false in a material particular,

the amount of any duty remitted or repaid under this section on the application shall be recoverable as a debt due to the Crown and if the statement was made or the document was produced knowingly or recklessly that person shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both.

"4. (1) The Board of Trade may by order provide for the allowance of drawback in respect of all or any duties under this Act on the export of goods in such circumstances and subject to such conditions as that may specify.

(2) The drawback may be in respect of duty paid on the goods or in respect of duty paid on materials used in the manufacture of the goods and the rate of the drawback may be determined in such manner and by reference to such matters as the Board of Trade may specify.

(3) Section twelve of the Finance Act, 1951 (which authorises relief from duty on temporary imports not qualifying for drawback), shall apply in relation to duties under this Act as it applies to duties under Part I of the Import Duties Act, 1932.

"5. (1) The Commissioners of Customs and Excise may require the importer of any goods to state such facts concerning the goods and their history as they may think necessary to determine whether the goods are goods originating in a country specified in an order under this Act or are goods exported from any country, and to furnish them in such form as they may require with proof of any statements so made; and if such proof is not furnished to their satisfaction or the required facts are not stated, the goods shall be deemed for the purposes of this Act to have originated in, or, as the case may be, to have been exported from, such country as they may determine:

Provided that the Commissioners shall require proof of the country in which goods originated in relation to any duty under this Act in the case only of goods exported from such countries as the Board of Trade may direct in relation to that duty.
(2) Where an order under this Act limits the description of goods in respect of which duty is chargeable under this Act or the cases in which duty is so chargeable so that the question whether any and if so what duty is chargeable on the goods depends on other matters besides the country in which the goods originated or from which they were exported, the Commissioners may also require the importer to state such facts as they may think necessary to determine that question so far as regards those other matters and to furnish them in such form as they may require with proof of any statements so made; and if such proof is not furnished to their satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Act to be such as they may determine.

(1) In relation to goods imported into the United Kingdom the export price from the country in which the goods originated or from which they were exported shall be determined as follows.

(2) If the goods are imported under a contract of sale which is a sale in the open market between buyer and seller independent of each other, and the Board of Trade are satisfied as to that fact, as to the price on that sale and as to such other facts as are material for this purpose, the export price shall be the price on that sale subject to a deduction for the cost of insurance and freight from the port or place of export in the said country to the port or place of import, and for any other costs, charges or expenses incurred in respect of the goods after they left the port or place of export, except so far as any such costs, charges or expenses have to be met separately by the purchaser.

(3) If subsection (2) of this section does not apply, the Board of Trade shall determine the export price by reference to such sale of the goods (or of any goods in which the first-mentioned goods were incorporated) as they may select with such adjustments as may appear to them to be proper.

(4) In this section the references to a sale in the open market between buyer and seller independent of each other shall be construed in accordance with paragraph 2 of the Sixth Schedule to the Customs and Excise Act 1952.

(1) The fair market price of any goods in a country shall for the purposes of this Act be determined as follows.

(2) Subject to the next following subsection, the fair market price shall be taken to be the price at which goods of the description in question (that is to say, any identical or comparable goods) are being sold in the ordinary course of trade in the said country for consumption or use there, but subject to any necessary adjustments, whether for differences in conditions and terms of sale, for differences in taxation or otherwise, which may be required for the purpose of ensuring that the comparison between the fair market price and the export price is effectively a comparison between the prices on two similar sales.
(3) If it appears to the Board of Trade that goods of that description are not being sold in the said country, or not in such circumstances that the fair market price can be determined in accordance with subsection (2) of this section, the fair market price shall be determined by the Board by reference to any price obtained for goods of that description when exported from the said country, with adjustments made for the purpose mentioned in sub-section (2) of this section, or, if the Board think fit, by reference to the cost or estimated cost of production of the goods the dumping of which is in question, with such additions in respect of selling cost and profit as may appear to the Board of Trade to be proper.

(4) No account shall be taken under this section of any application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

(5) Goods shall be regarded for the purposes of this Act as having originated in a country —

(a) if those goods were wholly produced in that country, or

(b) if some stage in the production of the goods was carried out in that country and the cost of carrying out such stages, if any, in the production of the goods as were carried out after those goods last left that country (but before the import of the goods into the United Kingdom) was less than twenty-five per cent of the cost of production of the goods as so imported, or

(c) if some stage in the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such stages in production as were carried out after those components or materials last left that country to convert those components or materials into the goods as imported into the United Kingdom was less than twenty-five per cent of the cost of production of the goods as so imported.

(2) Where the export price of any goods from the country in which they originated is in question and some stage in the production of the goods, or of any components or materials incorporated in the goods, was carried out after they last left that country, the deductions to be made by the Board of Trade in the price by reference to which the export price is to be ascertained shall include a deduction for the cost of carrying out any such stage in the production of the goods and in the production of any components or materials incorporated in the goods; and the fair market price shall be the fair market price of those goods or, as the case may be, of those components or materials, in the state in which they left that country.

(3) Any reference in this Act to the country in which goods originated shall be taken, in a case where there are two or more countries which answer to that description, as a reference to any of those countries.
(4) The Board of Trade may by regulations in a statutory instrument prescribe for the purposes of this Act—

(a) the costs, charges and expenses to be taken into account in ascertaining costs of production or the cost of any stage in production,

(b) the manner in which cost of production is to be ascertained in cases where different stages are carried out by different persons,

(c) the manner in which the cost of different stages of production is to be ascertained.

"9. (1) In this Act—

"country" includes any territory,

"importer" has the meaning assigned to it by subsection (1) of section three hundred and seven of the Customs and Excise Act 1952,

and references to producing goods include references to growing or manufacturing goods and to the application of any process in the course of producing goods.

(2) In this Act references to the country from which goods are exported to the United Kingdom are references to the country from which they were consigned to the United Kingdom and goods which in the course of consignment from any country to the United Kingdom pass through or are transhipped in any third country shall not on that account be regarded for the purposes of this Act as having been exported from that third country.

"10. Anything required or authorized by or under this Act to be done by, to or before the Board of Trade, may be done by, to or before the President of the Board, any Minister of State with duties concerning the affairs of the Board, any secretary, under-secretary or assistant secretary of the Board, or any person authorized in that behalf by the President.

"11. (1) Any power of making orders conferred on the Board of Trade by this Act shall include a power to vary or revoke an order so made and shall be exercisable by statutory instrument; and subsections (1) to (4) of section nineteen of the Import Duties Act 1932 (under which orders imposing a duty of customs require an affirmative resolution of the House of Commons and other orders are subject to a negative resolution of that House), shall apply in relation to orders under this Act as they apply in relation to orders under that Act.
(2) As soon as may be after the end of each financial year (beginning with the year 1957-58) the Board of Trade shall lay before each House of Parliament a report as to the orders under which duties have been chargeable under this Act during that year, indicating the contents of those orders and their operation in that year in relation to goods which have been imported into the United Kingdom.

"12. This Act may be cited as the Customs Duties (Dumping and Subsidies) Act 1957."
ANNEX 4

Memorandum transmitted by the Indian Government on the operation of Sections 4(1) and 8 of the Indian Tariff Act 1934

Under the Indian Constitutional Procedures, all proposals for levy or enhancement of duties and taxes require Parliamentary legislation. In regard to certain matters, however, authority to enhance duties or to levy additional duties has been conferred by law on the Central Government.

2. Under Section 3A of the Indian Tariff Act, the Central Government may, by notification, raise duties on any item for which the Tariff Commission has recommended protection, but the continuance of the protective duty depends upon the Parliament passing a bill for the levy of a protective duty on the item. Once Parliament has legislated protection for an industry on the basis of a recommendation by the Tariff Commission, it is open to the Central Government, after such enquiry as may be necessary, to increase or decrease the rate of protective duty under Section 4(1) of the Indian Tariff Act. Such adjustments of duty under Section 4(1) may also be carried out on the basis of the periodical review carried out by the Tariff Commission of the various factors affecting the protected industries including the safeguards required against any unequal competition from imported goods.

3. The power to vary duties under Section 4(1) is, however, not available in those cases where the industry has not been given protection by Parliament on the basis of the Tariff Commission's recommendation. For the large number of duties categorised in the Indian Customs Tariff as revenue duties, while a temporary remission or reduction may be affected under the relevant provision of the Sea Customs Act, an increase in the level of duty cannot take place except on the basis of the Tariff Commission's recommendation that the industry be given protection or in the normal course through fiscal legislation.

4. The procedure of levying countervailing duties set out in Section 8 of the Indian Tariff Act requires the Central Government to ascertain the net amount of bounty or grant bestowed in respect of an article for purposes of determining the additional duty to be levied on its importation. The Government of India have not made any use of this provision in recent years.

5. There are also no rules in application at present for the identification of articles on which a bounty or subsidy has been granted and for the assessment or collection of any additional duty for which a provision has been made in Section 8(2) of the Indian Tariff Act. It would, thus, be seen that at present, the Government of India have very limited powers to take emergent action with a view to safeguarding Indian industries from dumped or subsidized foreign products or from unfair competition from imported goods. If an industry is
suitable for grant of protection or its claim for protection has been referred to the Tariff Commission, that body could also examine any allegations of dumping or subsidization of the like foreign products with other material in arriving at a determination of the quantum of tariff protection required by the industry. There is at present no other machinery to deal with the question. Though the Tariff Commission is authorized under the Tariff Commission Act to investigate allegations of dumping or subsidization of imported products and to suggest remedial action, there are no recent instances of an inquiry being conducted by that body specifically for this purpose only.
The CONTRACTING PARTIES at the Eleventh Session decided that a study of anti-dumping legislation should be made by the secretariat with the assistance of experts from the governments concerned and that a report be submitted to the Intersessional Committee or to the Twelfth Session, (see SR.11/8, page 71). At the Ninth (Review) Session, Czechoslovakia, as a contracting party with an economic system, (and therefore a system of external trade), which is fundamentally different from the economic system of other contracting parties - a situation which implies that the phraseology relevant to the one system cannot merely be applied to the other with identical meaning - proposed that Article VI relating to anti-dumping duties should be modified and, if necessary, completed so as to render its provisions applicable also to the Czechoslovak economic system. As a result of the relevant negotiations, the new Interpretative Note No. 2 to paragraph 1 of Article VI was drawn up.

In view of the foregoing, Czechoslovakia is very much interested not only in the secretariat study but also in its preparation and therefore considers itself as one of the governments concerned in the sense of the above-mentioned decision by the CONTRACTING PARTIES.

Without wishing to go into the question as to what procedures the secretariat intend to follow for the preparation of the study, we should like, for the reasons indicated above and assuming that, as a first step, there would be talks with experts from the sole governments which actively apply anti-dumping legislation, that such experts be asked what are the procedures provided for under their national legislation or under current practice regarding the cases referred to in the above-mentioned Interpretative Note. The consideration that this Note does not yet represent an existing international legal obligation is not decisive in itself. The Note, however, contains certain findings and the study to be prepared should mention the attitude or the procedures which the various countries follow or intend to follow as far as this particular question is concerned.

If a group of experts were to be convened to study anti-dumping legislation, Czechoslovakia would wish to be invited to participate as a "government concerned".