At the meeting of the Group on Anti-Dumping Policies on 19 July 1965 the United Kingdom delegation undertook to circulate, if possible by the beginning of October, a draft of an international code on anti-dumping procedure and practice based on Article VI of the GATT for consideration by the Group in the third week of October. This draft is reproduced below.

Preamble

1. The purpose of the GATT is to secure the reduction of tariffs and other barriers to trade in pursuance of the objectives stated in the preamble and, it goes without saying, to prevent the creation of new barriers. The provisions of Article VI are consistent with this purpose since they provide for action against dumping and subsidization only in strictly limited circumstances. The fundamental and crucial provision is that anti-dumping and countervailing action may only be taken against dumped or subsidized imports which are causing or threatening material injury to the domestic industry of the importing country or retarding the establishment of an industry. By specifically ruling out action against imports which, though technically dumped, are not causing or threatening injury, the Article thus provides against indiscriminate anti-dumping action and the use of anti-dumping duties as a means of increasing the legitimate level of protection afforded by the tariff.
2. To be acceptable in the GATT a code of anti-dumping practice must be based on and reflect the intention of Article VI and its main purpose must be to provide for procedures and practices and give guidance which will result not merely in "harmonization" of anti-dumping practices but in a faithful interpretation and application of the anti-dumping policy of the GATT.

3. The administration of this policy can never be easy because material injury cannot be defined in absolute terms and no precise rules or formulae can be laid down for assessing injury to a domestic industry which would not involve a rigidity of treatment which would in many cases lead to a wrong decision. The proper use of anti-dumping powers - that is their use in full accordance with the intention of Article VI - must, therefore, in the last resort depend on critical examination of the evidence and impartial judgement. Nevertheless if certain guiding principles were accepted and certain procedures followed more uniform standards of judgement would result and unjustifiable decisions be avoided.

4. The provisions outlined below are those which, it appears, follow logically from acceptance of the full implications of Article VI - in particular that dumping in itself is not reprehensible and is not actionable. They are, therefore, intended to protect foreign suppliers from anti-dumping action being taken against dumped imports which are not genuinely causing or threatening material injury to a domestic industry (or retarding the establishment of a domestic industry) and to ensure so far as possible that the procedures and practices adopted in accepting and examining complaints and in arriving at a final decision are not such as to disrupt or inhibit trade during the period of investigation. The provisions reflect, amplify and make more precise the conclusions reached and the advice given by the GATT Group of Experts, whose report has been quoted in some of the provisions and explanations.

5. It is important that the provisions should be presented and considered in the relevant context and sequence so that the purpose and practicality of each and the totality of their effects can be properly judged; they have, therefore, been grouped under general headings and set out so far as possible in the chronological order in which they would be applicable in dealing with applications for anti-dumping action.
A. Conditions governing the acceptance and preliminary consideration of applications for imposition of anti-dumping duties

Provision 1

(a) "Applications for action against allegedly dumped imports shall be initiated and made by (or by the appropriate Trade Association on behalf of) the domestic producers of the like goods [save in the exceptional circumstances provided for in (b) below]."

(b) The circumstances in which the Group on Anti-dumping Policies of the Non-Tariff Barriers Sub-Committee may decide that initiation of action by the Government authorities in the importing country is necessary and justifiable.

Rationale

Since the criterion of material injury is one of the two criteria which must be met before anti-dumping action can be taken, the initiative for such action should come from the domestic producers who consider themselves injured or threatened with injury by dumping. Only the domestic producers themselves can be aware at first hand of the effects which they attribute to the alleged dumping and only they can provide evidence in regard to this.

Provision 2

"An application shall only be accepted by the authorities concerned when it is made by or on behalf of the domestic producers whose total production of the like goods represents a major proportion of the total domestic output of these goods."

Rationale

Article VI of the GATT lays down that the effect of dumping should be determined in relation to "an industry"; the use of this term shows that the reference is to the domestic producers concerned as a whole. Applications should not

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1 The term "authorities concerned" used throughout the paper refers to the Government officials or nominees of appropriate rank who are charged with the administration of the anti-dumping powers of the importing country.
therefore be accepted from or on behalf of one or a few individual firms unless the output of the firm or firms represents a major proportion of the total national production of the goods in question. (At the stage of acceptance of an application the above definition of an industry is adequate. For the further definition of the term industry which is required in consideration of material injury - see Section 6 below.)

Provision 3

(a) "No application shall be accepted which is not supported by information (as distinct from mere allegations) to show that

(i) the imported goods are being sold at dumped prices, and

(ii) that these imports are causing or threatening material injury to the domestic producers or materially retarding the establishment of an industry."

(b) "The initial information submitted with and in support of an application shall include the information detailed in Appendix A."

(c) "Following acceptance of an application the evidence of both dumping and material injury shall be considered simultaneously by the authorities concerned in order to determine whether there is, prima facie, a case for anti-dumping action."

(d) "An application shall be rejected immediately the authorities concerned are satisfied that there is insufficient evidence of either dumping or of injury to justify proceeding with the case."

Rationale

Since Article VI provides for action only against dumped imports which are causing or threatening injury, applications should be supported by evidence on both counts. To accept applications which are based only on evidence of dumping or only on evidence of injury is clearly contrary to the concept of injury by dumping.
Moreover to accept an application and to begin investigations on it in the absence of any supporting evidence prevents the immediate or early rejection of cases without substance and lengthens the period of investigation. This in turn encourages the lodging of applications which are without foundation in order to "frighten off" importers and foreign suppliers, thereby unjustifiably disrupting trade. It is in the interest both of genuinely aggrieved applicants and of the foreign suppliers concerned that applications should be considered and decided upon as quickly as possible.

B. Notification to and provision of information by foreign governments and suppliers

Provision 4

(a) "The official representatives of the supplying country or countries concerned shall be notified that an application has been accepted for investigation as soon as the authorities concerned are satisfied that a prima facie case has been made out on both dumping and injury. At the same time the foreign suppliers concerned shall be given (directly or through their official representatives) the relevant and specific price information included in the prima facie evidence on dumping."

(b) "The foreign suppliers shall be given a reasonable period in which to submit in writing or in person their comments and counter evidence on the price information on which the allegation of dumping is based."

(c) "The authorities concerned shall give full consideration to all such comments and counter evidence submitted to them. If, in order to verify the information provided or to obtain further details, they consider that discussion on the premises of the individual suppliers would be helpful, they may seek the agreement of the suppliers to such meetings subject to the concurrence of the representatives of the Government concerned."
(d) "All information provided on a confidential basis by the individual overseas suppliers shall be treated as strictly confidential by the authorities concerned who shall not reveal it (without specific permission) to any outside interests or to other interested parties e.g. the other overseas suppliers in the same or other countries, importers or the applicants."

Rationale

The governments of the countries concerned are entitled, as a matter of courtesy, to notification that a case against their exporters is under consideration but they also need this information - which they should be given no later than any public notice is issued - so that they may be able to answer questions on the matter.

Discussions "on the spot" enables the investigating officials quickly to clarify and/or obtain additional information; at the same time it enables the exporter to substantiate his statements and satisfy himself that the investigating officials are aware of and understand all the relevant facts. Normally, therefore, such discussions are welcomed by the governments concerned and their exporters.

Anti-dumping action should only be taken when the authorities concerned are satisfied that action is justified after investigation and assessment of all relevant and factually correct information. Foreign suppliers should, therefore, be afforded the opportunity to put forward evidence and encouraged to give full details by the assurance that whatever information they provide will, at their request, be treated as strictly confidential.

C. Provisional measures

Provision 5

(a) "Provisional measures shall be used only sparingly and in exceptional circumstances, i.e. only if and when it appears to the authorities concerned from their examination of the information submitted in
accordance with Provision 3(a) and (b) and any other information available to them that the allegedly dumped imports are in fact dumped and that they are currently causing material injury to the domestic producers or that the threat that they will do so is so imminent that material injury would result if the imports continued during the remaining period of investigation."

(b) "The provisional measures shall be cancelled immediately if the authorities are satisfied that there is insufficient evidence of either dumping or of injury proceeding with the case."

(c) "Provisional measures shall not be imposed against the suppliers of any one country for a period longer than three months."

Provision 6

(a) "If the provisional action takes the form of anti-dumping duties such duties shall not be greater than the margin of dumping shown by the available evidence in regard to prices."

(b) "If the provisional action takes the form of requiring security (e.g. by deposit or bond) the security shall not be for a sum greater than the margin of dumping shown by the available evidence in regard to prices."

(c) "If a case is rejected or if the duties finally imposed are less than any provisional duties or deposits paid, the importers shall be reimbursed as appropriate."

Provision 7

The appraisement of the valuation of the goods for the normal protective duties and the clearance of the goods shall not be withheld or delayed as a direct or indirect means of taking provisional anti-dumping action.
Rationale

Article VI makes no mention of provisional measures. The Group of Experts recognized "that in certain circumstances the use of such measures might be justified in order to limit the material injury to a domestic industry ... On the other hand it was generally felt that provisional measures should be used sparingly and for the shortest possible time in order to interfere as little as possible with normal trade and in order that they should not assume a protectionist character. For this reason, any such measures should preferably be introduced after the responsible administration of the importing country had carried out an initial confidential investigation that revealed that there was a serious case to consider further". Since the purpose of provisional measures is to prevent the material injury which a domestic industry might suffer if imports continued during the period of investigation, it is clear that the evidence of "a serious case to consider further" must be evidence in relation to injury as well as to dumping; it follows that initial examination of that evidence, in accordance with Provision 5(a) must (as distinct from "should preferably") take place before the provisional measure is introduced.

D. Determination of dumping in accordance with Article VI:1(a)

Provision 8

"When determining dumping in accordance with Article VI:1(a), i.e. by a comparison between the export price and the price of the like product in the domestic market of the exporter,

(i) the term "like product" shall be interpreted to mean a product which is identical or which is essentially the same the only difference being minor adaptations, e.g. to accommodate different tastes or to meet statutory requirements;
(ii) where the sale is between an exporter and importer independent of one another the export price shall be based on the f.o.b. or c.i.f. price of the goods; in cases where the c.i.f. or f.o.b. price is considered by the authorities concerned to be unreliable (because of association between the exporter and importer or for any other reason) the export price may be based on the price of any sale of the imported goods between independent buyer and seller in the importing country;

(iii) the domestic price may be based on the price of any sale between independent buyer and seller in the domestic market of the exporter; normally this will be the price of a sale by the producer to a user or distributor.

Rationale

As the Group of Experts agreed, the difference in meaning between the phrases "a like product" and "the like product" is not of practical significance. It is, however, essential that all the necessary adjustments should be made to the price to take account of minor differences (see also Provision 9 and Rationale).

It is essential also that the prices compared should be truly comparable in that they relate to sales which are comparable and they must, therefore, be compared at a notional common point of sale. In each case this should be the point to which it is most convenient to adjust each of the prices which have been selected as the basis for the calculation. Normally export prices should be calculated from, i.e. based on, the c.i.f. prices (which are usually known by the applicants and can be confirmed by the authorities concerned); only in cases where the importer is associated with the exporter or where it appears that so-called "hidden dumping" or "sales dumping" is taking place (i.e. the importer is being recompensed in some way by the exporter) should the export price be based on e.g. the wholesale price or the price paid by the final customer or user.
The domestic price may be based on a price of a sale at any stage in the
distribution of the goods about which reliable evidence can be obtained; in
practice such evidence will frequently be provided by the producer in respect
of his domestic sales.

Provision 9
(a) "When comparing the export price with the price of the like product
in the domestic market of the exporter such adjustments shall be made
to the two prices as are necessary to ensure that they are genuinely
comparable; accordingly allowance shall be made for
(i) Differences between the physical characteristics (e.g. accessories,
grades, quality) of the exported product and that sold on the
home market;
(ii) differences in the costs and charges included in one price and
not included in the other or for any differences in the value of
the same costs and charges which may be included in both prices.
Such costs and charges shall include packaging, freight, delivery,
insurance, storage and port charges; import duties and taxes,
turnover and similar taxes; distributors' (i.e. wholesalers',
retailers' and import agents') margins and commissions;
advertising and selling costs; discounts and rebates given in
respect of any commercial considerations including quantity,
cash payments, continuity of orders."
(b) "In cases where there are no exactly comparable sales e.g. where
there is no domestic sale of a comparable quantity, the appropriate
discount to be allowed shall be calculated by reference to the
discounts actually given e.g. in respect of other quantities."
(c) "Where there is a range of domestic prices for the product (even when account is taken of differences in conditions of sale, quantities etc.) the price selected for comparison with the export price shall be one representative of the range of prices within which the greater volume of domestic sales are made."

Rationale

To ensure that the prices relate to sales that are comparable not only must the prices be compared at a common point of sale (see Rationale to Provision 8) but due allowance must be made for all other differences which affect the comparability of the two prices, therefore the deductions or additions made to the export and domestic prices should include allowances in respect of any or all of the items listed above as may be appropriate.

Article VI lays down that "due allowance shall be made in each case for differences in conditions and terms of sale" etc., because conditions, terms etc. vary in each case and cannot, therefore, be subsumed under predetermined formulae.

Provision 10

(a) "In cases where the exporting country is not the producing country of the allegedly dumped goods (cases of so-called indirect dumping), dumping may be determined by comparison of the export price of the last country of consignment i.e. the price on which the allegation of dumping was based, with the comparable domestic price (in accordance with Provision 8) in either the country of consignment or the country of origin of the goods."

(b) "In cases where the allegedly dumped goods are merely transshipped through a third country without entering the commerce of that country the export price shall be determined by comparison with the domestic price in the country of origin."
Rationale

Article VI:1(a) refers only to the comparable price in the exporting country but, as the GATT experts agreed, it would be unreasonable to preclude importing countries from determining dumping by reference to the domestic price in the country of origin and so to prevent them from taking action against "indirect dumping". Moreover this would be inconsistent with the provision of Article VI which permits imposition of countervailing duties to offset the effects of subsidies whether these are given in the country of origin or in the exporting country.

E. Determination of dumping in accordance with Article VI:1(b)(i) and (ii)

Provision 11

(a) "When there are no "open" sales in the domestic market (i.e. when the only sales are between associated concerns) or when such sales are minimal, dumping shall be determined by comparison with either of the alternatives provided for in Article VI:1(b)(i) and (ii) at the discretion of the authorities in the importing country."

(b) "When the comparison is made as provided in Article VI:1(b)(i) the comparison shall be based on the two f.o.b. prices and due allowance shall be made for any differences in conditions and terms of sale affecting the price comparability, e.g. the differences in discounts or rebates or freight costs within the exporting country."

(c) "When the comparison is made as provided for in Article VI(b)(ii) the aim shall be to construct a notional ex-works sales price in the domestic market of the exporting country. In calculating the cost of production all the items involved, directly or indirectly, in the cost of producing an article shall be taken into account including, e.g. the cost of materials, components, labour, general overheads, depreciation of plant and machinery and interest on capital investment."
In determining the 'reasonable addition' for selling costs and profit the former shall include, if appropriate, advertising costs and sales commission; the latter shall normally be assessed by reference to return on capital employed."

F. Definition of an industry

Provision 12

(a) "Normally the term 'domestic industry' used in Article VI shall be interpreted as referring to the domestic producers of the goods in question as a whole, i.e. collectively or to those of them whose collective output of the goods constitutes a major proportion of the total national production of those goods. In short, the industry shall be identified as nation-wide in scope."

(b) "The effect of the dumped imports of a particular article shall not be assessed in relation to the domestic production and sales of the like article considered in isolation unless the article can be separately identified in terms of the production process and the producers' realizations, profits, etc."

(c) "The circumstances in which the Group of the Non-Tariff Barriers Committee may decide that, subject to proper safeguards, the term "domestic industry" may be differently defined."

Rationale

The use of the collective term "industry" clearly indicates that Article VI is not intended to provide for action against dumping which causes or threatens injury to one or a few firms when the dumping is having no materially adverse effects on the national output of the goods in question.

The injury which dumped imports can inflict must consist in the financial loss arising from reduction in the volume of sales and/or from reduction in the realizations resulting from depression of prices (see Provision 8(b)). It would, therefore, be a practical impossibility as well as unreasonable to
attempt to assess the effects of dumping on a part of the domestic producers' production which has no separate identity which is meaningful in the context of injurious dumping. The authorities concerned must therefore decide in each case upon the definition of production which can reasonably and practically be accepted as constituting an industry within the meaning of Article VI. It may not be possible for them to arrive at this decision at the outset of the investigation, i.e. before they have obtained detailed information from a number of individual firms. In a case of dumping of teddy bears, for example, it would be necessary to decide whether the effects of the imports could and should be assessed in relation to the domestic production of teddy bears alone or of soft toy animals or of all soft toys.

G. Determination of material injury

Provision 13

(a) "A finding of material injury shall be made and anti-dumping action taken only when the authorities concerned are satisfied

(i) that the dumped imports are directly causing or threatening injury to a domestic industry (or delaying the establishment of an industry)

(ii) that the injury caused or threatened (or the delay caused) by the dumped imports is material."

(b) "Material injury shall be interpreted to mean a reduction in returns which is substantial, i.e. important and significant, in relation to the total returns obtained by a domestic industry from its domestic sales. Therefore a finding of material injury, or the threat of it, can only be made if the authorities concerned are satisfied that because of the volume of the dumped imports and/or their effect on domestic prices, the returns are or threaten to be substantially lower than those which the industry would obtain in the absence of the dumped imports."
(c) "The assessment of injury shall be based on examination of all factors having a bearing on the state of an industry and which might indicate whether it is suffering or is likely to suffer from a substantial deterioration in the volume or prices of total domestic sales or in both and if so what the cause or causes are."

Rationale

The proper application of the crucial injury criterion of Article VI requires careful investigation in order to establish the causal relationship between dumping and injury and to establish that the injury caused is material. The facts may be clearer and more readily available in some cases than in others but the prima facie evidence is seldom so clear and consistent that an immediate assessment can be made of the condition of the industry and the causes of its difficulties if any; there is no way in which investigation can be avoided or can be reduced to stereotyped routine examination because the circumstances in each case vary and because material injury cannot be defined in precise and absolute terms. For example it cannot be assumed that a volume of dumped imports representing a certain percentage of domestic sales causes material injury because the effect of imports representing x per cent might be negligible in one case and very substantial in another.

Material injury may consist as much in a substantially reduced rate of expansion as in an actual reduction of the returns obtained by the industry.

Detailed investigation is therefore normally required of all the relevant factors in order to establish whether the industry is suffering from or is threatened by any adverse effects, if so, how grave these are and whether they are demonstrably mainly attributable to the dumping or to some other cause or
combination of causes e.g. competition between the domestic producers themselves, or competition from low priced but undumped imports, or contraction in demand due to substitution of other products, changes in consumer tastes etc.¹

Provision 14

A finding of threat of material injury shall be based on evidence and not merely on allegation, conjecture or remote possibility. The change which would create a situation in which the current dumping would cause material injury must be clearly foreseen, substantive and imminent, i.e. there must be convincing circumstantial evidence that the overseas suppliers intend to export in the immediate future substantially increased quantities of the goods at dumped prices, that there is no reason why they should not succeed in this and that they have every incentive to do so because, e.g., of surpluses in their domestic market or because their other export outlets have been closed.

Rationale

Article VI provides for action against dumped imports which threaten to cause material injury; this clearly refers to a situation in which imports which are being dumped are not currently causing material injury but would do so in certain eventualities.

Since the action taken against dumping which threatens material injury is as penal as that taken against dumping which is actually causing injury a finding of threat of injury should be based on very careful consideration and assessment of the probability of the change which would convert the threat into actuality; it must not be based on "the threat of a threat".

¹Pre-selection: This term has been used to describe the procedures whereby the consideration of dumping and injury and the determination of duties takes place before the duties are applied to imports of the goods in question as distinct from procedures whereby the duties are determined and applied by the customs authorities in respect of each consignment of imported goods. In this connexion the Group of Experts considered that "ideally" dumping and material injury should be determined in respect of each importation of the product concerned, but they recognized that this was "clearly" impracticable. Quite apart from practicality this would be contrary to Article VI because only very rarely could a proper assessment be made of the current and/or future effects of the dumping on a domestic industry by reference to a single importation. It appears, therefore, that if the conditions and intentions of Article VI are to be fulfilled no system other than so-called pre-selection can be used.
H. Determination of duties

Provision 15

(a) "The amount of the duty or duties shall be that required to remove the material injury caused or threatened by the dumping. Thus the duty or duties levied may be less but shall not be more than the established margin of dumping, i.e. not more than the difference between the two comparable prices which have been established in accordance with Provisions 8 or 10, except in the circumstances set out in (b) below."

(b) "If there are several exporters in the country or countries supplying the dumped goods and one rate of duty is imposed on the imports from each country the duty may be equal to the largest margin of dumping established in each country, the appropriate refund being made in accordance with Provision 16 of any excess duty levied on consignments which are not dumped or are dumped by a margin smaller than the duty."

Provision 16

"Partial or full relief from duty shall be granted on any consignment which the authorities concerned are satisfied has not been dumped or is dumped by a margin less than the amount of the duty. It shall be open to the exporters or importers to apply for relief to the authorities concerned at the time of the importation or at any time within six months of the date of importation."

Rationale

The purpose of anti-dumping action is to remove the material injury caused or threatened by the dumped imports. The duty or duties which are imposed should therefore be at a level which will prevent the dumping from causing injury; this means that they need not be equal to the full amount by which the goods are dumped but they must never be greater than the margin or margins of dumping which has or have been established.
The margins of dumping established in accordance with the provisions in Sections D or E are based on comparisons between the prices of sales made at a particular time, and are liable to alteration at any subsequent time because of changes in the export prices and/or in the prices with which the export prices are compared e.g. the prices in the domestic market of the exporter. In consequence the duty or duties levied may be greater than the margins by which subsequent imports of the goods are dumped. Provision must therefore be made for the full or partial repayment of the duty imposed on any consignments which have not been dumped or have not been dumped by as much as the duty.

Provision 17

"When the duty levied on each consignment is determined by reference to a basic price (i.e. the lowest price at which it has been determined that the imports would not cause or threaten material injury)

(i) the basic price shall not be more than the lowest price established for comparison with the export price in any of the supplying countries;

(ii) the authorities concerned in the importing country shall periodically review the basic price and revise it as necessary in the light of fluctuations in the lowest price in any of the supplying countries;

(iii) in accordance with Provision 16 the duty shall be refunded in all cases where the importers or foreign exporters can show that the goods were not sold at a dumped price although they were sold below the basic price."

Rationale

The determination of the anti-dumping duty to be imposed on each importation of the dumped goods by reference to a basic price is, as the Group of Experts concluded, consistent with the purpose of Article VI - namely that action should
be taken only against dumped imports which are causing or threatening injury in order to remove or prevent that injury. But the method may give rise to difficulties and dangers in cases where more than one country or, even, more than one supplier is involved; the purpose of this provision is to ensure that the authorities concerned exercise the care necessary to avoid these dangers.

I. Imposition of the duties

Provision 18

(a) "The final decisions on applications for anti-dumping action shall be taken by the government of the importing country or by their appointed representatives of appropriate authority in the light of the investigations into the circumstances and facts of each case, made in accordance with the provisions set out below."

(b) "The decisions shall be published in an official form and the representatives of the governments of the countries concerned shall be advised of the decision before, or at the time when, the official announcement is made; if the decision is to take action they shall be informed of the grounds on which the decision has been made."

(c) "The duties shall be levied from the time when the final decision is put into force and this decision shall not apply retroactively except in cases where provisional measures have been applied; in such cases the duties may be collected on the imports covered by the provisional measures up to the amount provided for by the provisional measures. If the provisional duties paid or the deposits made on the imports covered by the provisional measures exceed the duties finally determined the excess amounts shall be refunded in accordance with Provision 6(c)."
Rationale

The purpose of anti-dumping action is to prevent the dumped imports which are found to be causing material injury from causing further injury or to prevent the threat of injury from being realized. It would be contrary to the intention of Article VI to apply the corrective measures retrospectively, i.e., to imports of the goods concerned during any period before the investigations had been completed and the final decision taken, except in the circumstances provided for in Provision 18(c) above.

Provision 19

In cases where the dumped imports are being supplied by more than one country anti-dumping duties shall be imposed on a non-discriminatory basis; that is the duties shall, save in some quite exceptional circumstances, be applied at the appropriate levels on all dumped imports of the goods in question.

Rationale

Material injury is caused or threatened by the dumped imports as a whole. While it is true that when imports from country A represent say two thirds of the total these can be held to be responsible for more of the injury than imports from countries B and C together representing one third of the total, but it would be neither equitable nor practicable to impose duties on the former only for the following reasons. The application of duties on imports from A alone would allow countries B and C to continue to supply dumped imports which would soon increase to fill the demand formerly met from imports from country A thus rendering useless the action against the latter. Undertakings by countries B and C not to increase the volume of dumped goods which they supplied would not deal with this problem since this would allow them to retain a share of the market of the importing country by dumping while this was denied to country A.
If, alternatively, each country was allowed to retain a share of the market proportionate to the amount each had been supplying hitherto - but at a level which was deemed non-injurious to the domestic industry - this would amount to a quota system. The only equitable basis for anti-dumping action is, therefore, to apply the duties to imports from all sources which have been found to be dumped and causing or threatening material injury and to impose duties on imports of the goods in question subsequently supplied at dumped prices by any other country.

J. Duration of anti-dumping duties

Provision 20

Anti-dumping duties shall remain in force only so long as they are genuinely necessary. They shall be revoked as soon as

(i) full relief from duty has been granted in accordance with Provision 16 over a sufficiently long period to demonstrate that the goods in question will continue to be sold at undumped prices;

(ii) the authorities concerned are satisfied in the light of information at their disposal, or which is submitted to them, that imports of the goods in question on which the duty has been imposed can be sold at undumped prices or that the imports, though technically dumped, would no longer cause or threaten material injury to a domestic industry or materially retard the establishment of a domestic industry.

Provision 21

The authorities concerned shall carry out a review of the position if exporters of the goods in question so request and if they submit information substantiating the need for review.
Rationale

If the prices in the domestic market of the supplier of the dumped goods fall so that the goods could be exported at undumped prices the exporters or would-be exporters would, of course, draw the attention of the authorities concerned to this and submit the necessary evidence to them. If, on the other hand, the supply position in the importing country changes or if for any other reason the goods in question are being or can be sold at higher and undumped prices, the exporters would claim and obtain relief from duty. It can, therefore, be assumed that interested parties would draw the attention of the authorities concerned to any change in the position. If full relief has been granted over a period of time on all consignments of goods supplied by any one country this would demonstrate that the continued imposition of the duties was unnecessary and, in the unlikely event that no request for revocation had been received, the authorities concerned should, nevertheless, revoke the duties.

K. Anti-dumping action on behalf of third countries

Provision 22

(a) "Application for anti-dumping action in accordance with Article VI:6(b) shall be initiated and made by the government of the third country requesting action."

(b) "Such applications shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing or threatening material injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require."
Provision 23

"The authorities of the importing country in considering such applications shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the particular market where the alleged dumping is taking place or even on the industry's total exports."

Provision 24

"The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action the initiation of the approach to the CONTRACTING PARTIES seeking their approval for such action in accordance with Article VI:6(b) shall rest with the importing country."

Rationale

It is clear that the initiative for requesting action against damage caused to an industry in a third country by dumping in one of that industry's export markets must be taken by the authorities of the third country. Equally, it is clear that the decision whether to refuse or, subject to the approval of the CONTRACTING PARTIES, to grant the request of the third country must rest with the importing country.

As the Group of Experts confirmed, the grounds on which a third country requests action must be that the dumping against which action is requested is causing or threatening injury to an industry in the third country. This means that the volume of exports to the market in question must be so great in relation to the total production of the industry (i.e. the total of its domestic and export sales) that the loss from the reduction in the volume of and/or the realizations from, the sales in the one export market must be such as to cause or threaten material injury to the industry as a whole. Thus even the total loss of a particular export market would not constitute material injury to the industry if its exports to that market were not substantial and significant in relation to its total export and domestic trade.
Information to be Submitted with and in Support of an Application for Anti-Dumping Action

Information relating to dumping

1. (a) Description of goods alleged to have been dumped.
   (b) The name(s) of the manufacturer(s), if known.

2. (a) The country of origin of the goods and/or the country of consignment if this is not the country of origin.
   (b) The name(s) of the foreign supplier(s) and importer(s), if known.

3. Period during which the alleged dumping has been taking place.

4. The price at which the allegedly dumped goods are being imported (normally the c.i.f. or f.o.b. price) or a price at which they are being sold in the importing country.

5. (a) The prices at which it is claimed that comparable goods are being sold or being offered for sale in the country of origin or consignment as the case may be.
   (b) The point of sale - e.g. wholesale or retail - and quantities involved.
   (c) The source of the information under (a) and (b) - e.g. price lists, specific quotations, etc.

6. Any information available with regard to terms and conditions of the sales for which prices have been given and which affect price comparability.

7. (a) If comparable goods are not sold in the market of the country of origin or consignment, either
   (i) the price at which it is claimed they are being exported to third countries, or
   (ii) the estimated cost of production of the allegedly dumped goods.
   (b) The source of the information for (a)(i) or the basis of the estimate for (a)(ii).
Information relating to material injury

8. Particulars of the domestic producers of the goods in question who are supporting an application for anti-dumping action or on whose behalf such an application is being made.

9. Statistics or, where statistics are not available, estimates showing the volume of output, domestic sales and stocks for each of recent years (normally three to five years) in respect of:

   (i) all domestic producers of the goods in question;

   (ii) the domestic producers of the goods in question who are supporting the application for anti-dumping action or on whose behalf such an application is being made.

10. A statement of the prices of the applicant producers.

11. Statistics or, where statistics are not available, estimates for recent years of the volume of imports of the goods in question from:

    (i) all supplying countries;

    (ii) each country supplying the goods in question at allegedly dumped prices;

    (iii) each country other than those in (ii) above supplying significant quantities of the goods in question.

12. Information to be provided by typical producers amongst those supporting the application which they consider demonstrates the materially injurious effect (actual or threatened) of the allegedly dumped imports. This information may be submitted by individual producers directly and in confidence to the authorities concerned and should include:

    (i) details of prices over recent years with explanations in regard to the levels of such prices;

    (ii) details of the volume of sales over recent years with explanations in regard to the levels of sales;

    (iii) any other information relevant to the effect of the allegedly dumped imports; e.g. information relating to employment, surplus capacity, order books and production plans.