DRAFT REPORT OF THE SUB-COMMITTEE ON PROTECTIVE MEASURES

1. The Sub-Committee on Protective Measures held its third session on 23 and 24 June 1981, under the Chairmanship of Ambassador Hill (Jamaica).

2. In his introductory remarks, the Chairman drew attention to the Sub-Committee's terms of reference, as determined by the CONTRACTING PARTIES in November 1979 (L/4899). These required it to examine any case of future protective action by developed countries against imports from developing countries in the light of the relevant provisions of GATT, particularly Part IV thereof, such examination being without prejudice to the rights of contracting parties under the GATT or the competence of other GATT bodies. The Chairman also recalled the guidelines and procedures for the Sub-Committee's work as established by the Committee on Trade and Development and elaborated further at the first meeting of the Sub-Committee in July 1980.

3. The Sub-Committee had before it four notifications received from governments in response to GATT/AIR/1711: notifications by Australia and Switzerland were circulated as documents COM.TD/SCPM/W/5 and COM.TD/SCPM/W/6 and "reverse" notifications from India and Argentina were circulated as documents COM.TD/SCPM/W/7 and COM.TD/SCPM/W/9, respectively. In addition, the secretariat had put together in COM.TD/SCPM/W/8 certain information on a number of measures that could be of interest to the Sub-Committee. Addendum 1
to that document contained tariff and trade flow data in respect of the measures notified by Australia and Switzerland. The information contained in the secretariat note was presented, as indicated in its paragraph 9, in accordance with the understanding reached at the first session of the Sub-Committee that the inclusion of measures in secretariat documents for the Sub-Committee would be without prejudice to views delegations might have regarding the desirability of taking up for examination any such measures or on whether they fell within the Sub-Committee's terms of reference.

4. The Sub-Committee organized its work by first taking up the notifications made by governments, followed by discussion and examination of a number of measures referred to in the secretariat document, including also developments with regard to certain measures examined at its earlier meetings. A number of delegations from developing countries expressed appreciation for the notifications made by Australia and Switzerland in accordance with the guidelines and procedures established by the Sub-Committee.

**Australian notification** (COM.TD/SCP/M/W/5)

5. Representatives of a number of developing countries, in referring to the adverse effects that the Australian measure could have on their trade in certain soft-sided containers, requested information from the Australian delegation on the criteria generally followed for extending assistance to a domestic industry, whether the measure was likely to expire after the twelve months period of temporary assistance provided for, or be extended, and whether a review procedure existed by which the action could be terminated earlier than the stipulated period should circumstances permit.

6. Replying to the questions raised, the representative of Australia explained that in cases where temporary assistance was given to a domestic
industry, the Industries Assistance Commission was requested, prior to the termination of the period of temporary assistance, to investigate the matter with a view to determining whether the measure be continued or terminated or whether longer-term assistance might be required. With regard to the measure under discussion, assistance had been provided through the application of a temporary duty of 20 per cent for a period of twelve months as of 4 February 1981. As to the criteria for determining the need for assistance, this was a matter for the Temporary Assistance Authority once the Government had referred a matter to it. Before making such a reference, the Government establishes that a prima facie case exists for considering the need for such assistance.

The representative of Australia noted that total imports of soft-sided containers, on an FOB basis in 1979/80, amounted to A$1.6 million, the major suppliers being Taiwan and Hong Kong. He also indicated that the temporary duty of 20 per cent was lower than the 25 per cent to 30 per cent applicable to other products of the travel goods industry.

7. In response to a question concerning the GSP duty rate accorded to imports of fluorescent and filament lamps falling within tariff heading 85.20, which were subject to increased m.f.n. duties of 10 per cent and 25 per cent pending consideration by the Australian Government of long-term assistance for the lamps industry on the basis of an Industries Assistance Commission's report later this year, the representative of Australia stated that GSP duty-free treatment continued to apply to these items.

Swiss notification (COM.TD/SCPM/W/6)

8. The representative of Switzerland stated that, as indicated in his country's notification, the price supplements charged on imports of edible vegetable oils and fats in accordance with domestic law had been in existence for a considerable period of time with the aim of maintaining a certain
balance in the Swiss market as between the consumption of vegetable and animal
oils and fats. The increase in the price supplements on imports of edible
vegetable oils and fats as of 1 January 1981, which had been the first such
increase for four years, was for this purpose and accompanied an increase in
the price of butter in Switzerland on the same date. The increase in price
supplements had been in the order of 45 Swiss francs per 100 kgs.

9. In reply to a question, the representative of Switzerland indicated that
the duration of a particular level of price supplement was linked to
adjustments to the domestic butter price. However, price supplements on
vegetable oils and fats did not automatically rise at the same time as the
butter price; in 1979, the butter price had been increased, but the price
supplement on vegetable oils and fats had been left unchanged.

10. A number of delegations of developing countries, including the least-
developed among them, expressed concern at the effect that increases in price
supplements might have on their exports of edible vegetable oils and fats to
Switzerland. One of these delegations noted that the arrangement was not
motivated by trading practices but by certain domestic considerations. If
such an approach was to proliferate into other sectors, then, in his view, a
severely distorted situation affecting trade could arise. Some of these
delegations suggested that careful consideration be given to the interests of
developing countries, including possibilities for differential treatment, when
measures of the type under discussion were being contemplated.

11. By way of clarification, the representative of Switzerland explained
that the measure did not provide additional protection, but was intended to
maintain a certain balance in consumption which, in the last fifteen years,
had been of the order of 7 kgs. per head for butter and 13 kgs. per head for
vegetable oils and fats.
Reverse notification by Argentina (COM.TD/SCPM/W/9)

12. The representative of Argentina, in referring to the reverse notification submitted by his authorities in COM.TD/SCPM/W/9, said that most of the measures listed affected trade in agriculture, an area where protection had been prevalent for some considerable time. He indicated that he had had bilateral contacts with some of the delegations to which the Argentinian notification referred, and had obtained certain clarifications as a result. While he was hoping to have further contacts in the near future, his delegation would welcome any information delegations might be in a position to provide in the Sub-Committee on the measures listed.

13. Having regard to certain comments and observations he had made concerning the work of the Sub-Committee, in the light of its terms of reference, as reflected below in paragraph 25, the representative of the European Communities provided information on a number of the measures listed of relevance to the Community market taking into account the flexible and pragmatic approach the Sub-Committee had adopted in its work. With regard to tobacco, he stated that no member State applied import quotas on this product. In connexion with sanitary measures on sheep meat, he said that, since there existed in Argentina, north of latitude 42, a problem of foot and mouth disease, the Community had adopted in 1978 a Directive (No. 693) specifying sanitary requirements and establishing a certification system for imports of sheep meat from Argentina. Imports into the Community of sheep meat originating north of latitude 42 in Argentina were required to be in deboned form; sheep meat originating south of latitude 42 could be imported into the European Communities in any form. This Directive was applied in all member States of the Community. With regard to the notification concerning
horse meat, the representative of the European Communities stated that there was no requirement for an import certificate in France of the sort indicated in COM.TD/SCPM/W/9, page 2; an import declaration was needed, however, for statistical surveillance purposes.

14. Commenting on the Swiss measures notified by Argentina on pages 5 and 6 of COM.TD/SCPM/W/9, the representative of Switzerland said that he shared the views of the European Communities regarding the appropriateness of the Sub-Committee as a forum for examining measures that had been in force for some time. He suggested that the relevant measures might be taken up through a notification in the context of the Inventory of Non-Tariff Measures, and hoped in this connexion that the Argentinian delegation would be in a position to define more precisely the products and measures of interest to Argentina.

15. Referring to the measures listed on page 6 of COM.TD/SCPM/W/9 concerning the Nordic countries, the representative of Norway said that, in her view also, these issues could more appropriately be taken up under the Inventory of Non-Tariff Measures. Certain discussions had taken place between the Nordic countries and Argentina on points indicated in the notification and could be continued as mutually convenient. She said that, in accordance with Article XVII:4(a) of the General Agreement, the Nordic countries notified to the CONTRACTING PARTIES all products subject to state-trading. In no Nordic country were fruit and vegetables subject to state-trading; medicaments were subject to state-trading only in Norway.

16. Referring to the registry system for medicaments in operation in his country, the representative of Finland said that all medicaments sold at the retail level had to be registered with the Board of Medicine. This measure, which was based on the need to safeguard the life and health of citizens, applied equally to domestically produced and imported medicaments and thus had
no discriminatory effect. It had been in force since the establishment of the Finnish State. The Finnish authorities were prepared to pursue discussions on the matter with the delegation of Argentina. The representative of Sweden said that Sweden operated an arrangement for medicaments broadly similar to that of Finland. Discussions had taken place between Sweden and Argentina on this matter in the context of the Non-Tariff Measures Inventory, and could be expected to continue.

17. Referring to the measures notified in COM.TD/SCPM/W/9 by Argentina concerning their countries, the representatives of Austria and South Africa said that they had not had sufficient time to obtain from their respective capitals the information necessary to respond; they would be willing to pursue the matters bilaterally with the Argentinian delegation as soon as details were available. The representative of Spain also indicated that his delegation was prepared to consult bilaterally with Argentina on the measures of relevance to Spain contained in the Argentinian notification.

18. Commenting on some of the points made, the representative of Argentina said that the aim of his notification was not to discuss whether certain measures were permitted under GATT or not, but whether they constituted impediments to the trade of his country. He looked forward to receiving the responses to the Argentinian notification from the Austrian and South African delegations as well as Spain, and expressed the hope that the delegation of Portugal, which had not been available to respond at the present session of the Sub-Committee, could forward its observations through the secretariat as soon as possible or discuss the measure listed on a bilateral basis.

Reverse notifications by India (COM.TD/SCPM/W/7)

19. The representative of India said that the Indian delegation had notified the measures listed in COM.TD/SCPM/W/9 on the understanding that measures of a
protective nature could be discussed in the Sub-Committee, focussing in particular on any adverse effects on the trade of developing countries taking into account the provisions of Part IV. In his view, the intention was not to take up the question of the legality of the measures notified, since the Sub-Committee was in no way a substitute for the normal GATT dispute settlement procedures. He said that the Indian notification had been made in a constructive spirit and that his delegation was willing to enter into consultations and such other procedures that may be thought appropriate in the Sub-Committee, with the objective of finding ways of reducing the adverse effects of the measures on the trade of his country. He expressed concern about the apparent increasing recourse to anti-dumping and countervailing actions, especially since it had been hoped that the relevant MTN codes would lead to greater discipline in their use, a reduction in arbitrariness and an increase in predictability in the trading system.

20. The representative of India provided the Sub-Committee with some additional details concerning the actions referred to in COM.TD/SCPM/W/7 including details of the tariff lines affected, the levels of anti-dumping and countervailing duties applied and the trade coverage. This information is being circulated in COM.TD/SCPM/W/7/Rev.1. In addition, the representative of India outlined the present status of the various actions referred to in COM.TD/SCPM/W/9. With regard to the United States countervailing duty on industrial fasteners, he said that an annual administrative review of this case by United States authorities had been initiated. With reference to the United States countervailing duty on public works castings, he said that, since 12.5 percentage points of the countervailing duty was accounted for by the Indian cash compensatory support programme and since the rate of cash compensatory support had been reduced to 5 per cent with effect from 29
January 1981, his authorities were hopeful that the review of this case that had been initiated in the United States would result in the immediate reduction in the countervailing duty by 7 1/2 per cent and reconsideration of the need for the remaining element of countervailing duty. Concerning the anti-dumping investigation on public works castings, he said that the United States Department of Commerce had made a preliminary determination that such castings were not being sold in the United States at less than fair value; the final determination was being awaited. Referring to the United States countervailing duty action against certain textile and textile mill products, the representative of India said that, following the determination in September 1980 that no subsidies were being conferred on these products, the bonds and securities collected earlier had been cancelled. In connexion with the Australian anti-dumping action on power hacksaws, the representative of India said that the present situation was that, as of February 1981, an anti-dumping duty had been applied on certain power hacksaws exported to Australia by India and several other countries on or after 29 August 1980. He emphasized that the main concern of the Indian authorities in this respect was that, in their view, the Government of Australia had not followed the procedures relating to the collection of evidence as provided for in the Anti-Dumping Code of 1967. Concerning the import ban in the United Kingdom on certain groundnut and cotton seed extractions containing detectable levels of aflatoxin, the representative of India noted that the ban did not extend to other ingredients in animal feedstuffs, such as maize which was mainly exported by the United States and Canada. In addition, his authorities were not aware of the introduction by the United Kingdom of any regulations on final products used as compound feedstuffs for animals, in which the extractions covered by the measure could be used as ingredients. He wished to
place on record the serious concern of his authorities about the effects on India's trade of this measure.

21. In response to the notification concerning aflatoxin, the representative of the European Communities said that aflatoxin was a micro-toxin produced in food as a result of certain mould which was found on crops and flourished in conditions of humidity and heat. Crops particularly afflicted were rice, maize, groundnuts and cotton seed. There was no evidence, however, of significant micro-toxin content in flours including oat-meal. He said that the measure had been taken by the United Kingdom following the detection of consignments containing excessively high levels of aflatoxin. The reason for the measure was that aflatoxin B₁ was one of the most poisonous micro-toxins known. The measure was, therefore, designed to preserve public health and, as such, was not, in his view, appropriate for discussion in the Sub-Committee. The representative of the Communities further explained that the reasons why action had not been taken with respect to certain other commodities had been because the available evidence had indicated no need for such action. With regard to compound feedstuffs for animals, he said that it was his understanding that there were statutory requirements in the United Kingdom on the maximum permissible levels of aflatoxin and other micro-toxins. He indicated the readiness of the Community to pursue discussions on this matter bilaterally with the Indian delegation.

22. With respect to certain notifications contained in COM.TD/SCPM/W/7, the representative of the United States said that in the view of his authorities anti-dumping and countervailing duty actions were not protective measures, but were legitimate responses to unfair trade practices. He noted that United States anti-dumping and countervailing duty actions were notified to the Committee on Anti-Dumping Practices or the Committee on Subsidies and
Countervailing Measures. In the opinion of his authorities, these measures were fully consistent with the General Agreement as well as the codes on Anti-Dumping and Subsidies and Countervailing Duties. As several United States anti-dumping or countervailing actions were before the relevant GATT bodies, he felt that it would serve little purpose to comment at this stage on such matters in the Sub-Committee.

23. The representative of Australia, in stating that he would convey to his authorities the comments made by the Indian delegation on the measures of relevance to Australia notified by India, assured the Indian delegation that there was no intention by Australia of eroding the rights of India under the General Agreement. He expressed support for the view of the United States delegation concerning the appropriateness of the Sub-Committee as a forum for taking up anti-dumping or countervailing actions.

24. The representative of Japan said that his delegation was not necessarily opposed to the examination in the Sub-Committee of anti-dumping or countervailing actions or other measures taken in accordance with GATT provisions. However, it did have doubts about the need for the Sub-Committee to keep under continuing review developments with regard to measures examined at earlier meetings of the Sub-Committee.

25. The representative of the European Communities recalled that the question of taking up anti-dumping measures and countervailing actions for discussion in the Sub-Committee had been considered at its first session. It was clear to his delegation that the Sub-Committee was not a body in which the legality of measures in terms of the provisions of GATT should be examined. However, it was useful to bear in mind the general view in the Committee that a developing country could raise a measure for discussion if it felt that such a measure was protective. Commenting on the reverse notifications presented
in COM.TD/SCPM/W/7 and 9 and on the secretariat document COM.TD/SCPM/W/8, he said that, while the Community was prepared to participate in the work of the Sub-Committee in a pragmatic manner and while noting that working documents were submitted without prejudice as to whether measures should be examined or regarded as protective in nature, he considered it important for the Sub-Committee to stay as close as possible to its terms of reference. He also noted that certain of the measures listed in the documentation were not "new" in terms of the Sub-Committee's mandate and that the sanitary measures notified could not properly be treated as protective.

26. Commenting on the points made, the representative of India said that the Sub-Committee should be able to discuss measures even if taken consistently with certain GATT provisions, when developing countries considered that such measures could have an adverse effect on their trade. In connexion with a reference which had been made to possible resort to the dispute settlement mechanisms of GATT, he noted that in GATT a dispute only arose when a complaint was made. He considered that there might be cases when, for whatever reason, a developing country might be reluctant to have recourse to GATT dispute settlement procedures. Hence it was important for developing country delegations to be able to utilize the opportunities provided by the Sub-Committee for discussion and for seeking clarifications and explanations when they felt that a measure could be adversely affecting the trade of their countries. A number of representatives of developing countries expressed their support for the views put forward by the delegation of India. One of these representatives said that since not all developing countries were signatories of the codes, they could not necessarily raise matters in the committees established under these codes. The representative of Singapore said that in the present international economic situation, governments
appeared to be increasingly ready to initiate anti-dumping investigations against imports from developing countries; he referred in this context to the measures listed in Annex 2 of COM.TD/SCPM/W/8. Often these investigations were initiated on the basis of insufficient evidence and a finding of no dumping was eventually made. However, in the meantime considerable damage to trade flows might have occurred. In one case concerning his country, an investigation had been closed after eight months with a finding of no dumping. In another case, only one company out of six investigated had been found to be dumping following an investigation lasting six months, and in the meantime the trade flows in question had fallen 53 per cent.

27. The representative of Canada, while noting the discussions which had taken place on this matter at earlier meetings of the Sub-Committee, referred to the difficulty of examining anti-dumping and countervailing duties in the Sub-Committee not only on grounds of principle, but also on grounds of practicability and technical competence. Although there was no obligation for countries to join the MTN codes, he urged interested developing countries to accede to the agreements on anti-dumping and subsidies and countervailing duties, since the committees established under those agreements constituted fora in which experts were available to discuss the technicalities of anti-dumping and countervailing actions. He noted the concern expressed by a number of developing countries at the apparent increasing resort to anti-dumping and countervailing actions. He expressed the view, however, that the disciplines provided under the GATT codes were working and that this was shown by the number of investigations terminated with a finding of no dumping or subsidy. While the system might not be perfect and an increase in the number of investigations might be causing some difficulties, he considered that the present situation was preferable to the ill-disciplined use of possible
alternative measures.

28. Concluding the discussion, the Chairman recalled that many of the points that had been made had been discussed at the first session of the Sub-Committee, and had been summarized in paragraph 18 of the Sub-Committee's first report (COM.TD/SCPM/1). He expressed the hope that the Sub-Committee would be able to continue to work on the basis of paragraph 18 of COM.TD/SCPM/1, and that responses by developed countries would continue to be as helpful as in the past.

Discussion on points arising out of the secretariat note, COM.TD/SCPM/W/8

29. Responding to a query concerning the restrictions imposed by Greece on imports of certain woven fabrics of jute from India and Bangladesh, the representative of the European Communities confirmed the information contained in paragraph 5 of the secretariat note to the effect that the restriction was being applied pending the outcome of negotiations between the EEC, on the one hand, and Bangladesh and India, on the other, on the adaptation of their respective agreements providing for restraint of exports of certain jute products to the Community, to take account of the accession of Greece. He expressed his willingness to provide further details bilaterally if requested. The representative of the European Communities, recalling the general points he had made concerning the documentation for the Sub-Committee (see paragraph 25 above), indicated some reservations with respect to the inclusion of certain information on steel contained in paragraph 13 of the secretariat note.

30. Referring to paragraph 11 of COM.TD/SCPM/W/8, the representative of India said that the Commission of the European Communities had been in touch with India as well as with the other countries mentioned concerning import arrangements in the Communities for tapioca. He indicated the interest of his
authorities in the outcome of the consultations between Thailand and the
European Communities on this matter and expressed the hope that the European
Communities would continue to keep India fully informed of developments,
especially with regard to the alternative arrangements possible. In response,
the representative of the European Communities indicated that no formal
agreement had been signed with Thailand, though much preparatory work had been
undertaken. In commenting on the information contained in paragraph 11 of
COM.TD/SCPM/W/8, he said that the mandate given to the Commission by the
Council included, as one alternative, the modification of the tariff binding
in GATT.

31. The representative of Switzerland, referring to the Swiss measures
listed on page 2 of COM.TD/SCPM/W/8, confirmed that as indicated in paragraph
7 of that document, there had been re-negotiations under the provisions of
Article XXVIII of the General Agreement, the results of which had been
notified to GATT. He noted that the secretariat had selected the positions
affected that included imports from developing countries and that these
imports were small. He said that there had, of course, been balancing tariff
reductions made in the process of the re-negotiations and that certain of
these reductions were of interest to the trade of developing countries.

32. The representative of Singapore, clarifying the information contained in
Annex 2 of COM.TD/SCPM/W/8 concerning the anti-dumping procedure in the
European Communities on louvre doors, said that out of six Singapore companies
investigated, four had been found not to be dumping and one had stopped
production of this item; a price undertaking had been given by the other
company following a finding of dumping.

33. The representative of India recalled that it had been suggested earlier
that one possible function of the Sub-Committee would be to identify broad
trends in protective measures that could lead to adverse effects on the trade of developing countries as well as to examine specific measures on a case-by-case basis. In this respect, he indicated that he found the general information contained in the secretariat note on such matters as developments in iron and steel helpful in facilitating the assessment by developing countries of the possible consequences of such developments on their trade.

The representative of another developing country emphasized the need for the Sub-Committee to take account, not only of directly protective actions, but also other measures that could have a protective effect, including voluntary export restraints adopted by developing countries at the request of developed countries. He said that such voluntary restraints were neither provided for nor regulated by GATT rules, and that they were generally established as a result of unbalanced negotiations among GATT partners. He said that it would be useful to receive from developed countries information on voluntary export restraints that they had negotiated with developing countries.

34. Providing certain clarifications on the information presented in paragraph 15 of COM.TD/SCPM/W/8, the representative of the United States said that the trigger price mechanism, rather than providing for the "automatic" initiation of dumping investigations, was solely a monitoring service to help the United States Department of Commerce identify, and respond expeditiously to, instances of injurious unfair import practices. Sales below the trigger price would not lead to the initiation of an anti-dumping investigation unless, in accordance with GATT rules and United States laws, there was adequate evidence of dumping, of material injury to a United States industry, and of the causal link between the two. The trigger price mechanism did not alter this law or procedures for conducting anti-dumping investigations. Concerning the surge mechanism under the trigger price system, he said that,
even when the criteria established for surge reviews had been met, such reviews were only conducted with respect to a particular product category from a particular country or particular countries upon request. He further said that the trigger price mechanism was reinstated effective 21 October 1980, and not 8 October 1980 as indicated. He added that, however, a grace period had been provided for sales under pre-existing fixed-price contracts.

**Developments with respect to protective measures discussed at the Sub-Committee's earlier meeting**

35. Referring to the EEC measures on preserved mushrooms described in paragraph 18 of COM.TD/SCPM/W/8, the representative of the United Kingdom, speaking on behalf of Hong Kong, said that his authorities wished to reserve their position on this matter as they had some doubts as to whether the measures were fully compatible with the GATT.

36. The representative of the European Communities said that he had noted the statement by the representative of the United Kingdom speaking on behalf of Hong Kong. He said that it was not the function of the Sub-Committee to consider the consistency of measures with the relevant provisions of the General Agreement and he would therefore not touch on this aspect of the matter. The representative of the European Communities informed the Sub-Committee, that with effect from 15 June 1981, a new regime for imports of preserved mushrooms had been introduced, which would be notified to the CONTRACTING PARTIES. Under the new regime, imports of preserved mushrooms in excess of 34,750 tonnes would be subject to a supplementary duty of 150 ECU per 100 kgs., in addition to the normal duty, which was not bound in GATT.

37. The representative of the United Kingdom, speaking on behalf of Hong Kong, said that he had noted the comments made by the representative of the European Communities and would report them to his authorities.