VI. Anti-dumping duties

A. Imposition

In the opinion of the Norwegian authorities a finding of dumping and material injury should not automatically imply levying of anti-dumping duties. One of the most apparent reasons for opposing an obligatory levy of duties seems to be that application of anti-dumping duties is a rather severe measure and that, accordingly, it might be desirable to try to find other solutions to the problem (e.g. negotiations between the interested parties). Another reason is that other aspects than those relating to prices and injury may be considered - e.g. trade policy aspects and the question of structural adjustment in the domestic industry concerned.

The conclusion of the GATT Group of Experts that decisions concerning the application of anti-dumping duties should be taken at a high administrative level also underlines the desirability that all aspects are considered thoroughly before anti-dumping duties are levied.

B. Applicability

The ideal method is that the anti-dumping measures are directed only against those firms which have been found responsible for the dumping. To prevent circumvention it might, however, be justified to widen the scope of the measure so as to comprise all imports of the goods in question from the countries from which the dumped imports come. It is then understood that relief from duty shall be granted in all cases where the authorities concerned are satisfied that the goods have not been dumped.
C. Amount of duty

In principle the amount of duty should be that required to remove the material injury caused or threatened by the dumping. This seems, however, to be a rather theoretical approach to the problem as in practice it will in most cases be difficult to determine exactly the amount of duty which will be necessary to remove the material injury caused or threatened. It appears, therefore, that the formulation in Article VI is a fairly good and practical one. It says that "... a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping ..." and assumes in this way clearly that the duty may be less than the margin of dumping.

Whether the amount of duty should be fixed in the final decision or determined for each consignment by reference to a basic price is probably first and foremost a question of practical adjustment. Thus, the use of basic prices seems to be necessary in certain circumstances in order to facilitate the administration of the measure. The system may, however, be open to abuse and the reservations indicated by the GATT Group of Experts are, therefore, probably necessary.

D. Retroactive application of duties

In the opinion of the Norwegian authorities anti-dumping duties should not be applied retroactively. The duty fixed in the final decision should, however, be settled against the duties collected on a provisional basis if the final duty is less than the provisional duty.

E. Duration

The main point is, as the GATT Group of Experts expressed it, that "anti-dumping duties should remain in force only so long as they were genuinely necessary to counteract dumping which was causing or threatening material injury to a domestic industry". The most practical way of securing this is probably that the authorities concerned undertake to review the position if the exporters so request and if they submit information which substantiates the need for review. The duties should then be revoked as soon as the authorities are satisfied in the light of the new information at their disposal that the goods are no longer sold at dumping prices or that the imports no longer cause or threaten material injury to the domestic industry. Such a procedure should be accompanied by a provision to the effect that the duty shall be refunded on any consignment which the importers or the exporters can show have not been sold at dumping prices.

With such safeguards there is probably no need for setting a definite time-limit to the duration of anti-dumping measures.
VII. Provisional measures

The Norwegian authorities share the views expressed by the GATT Group of Experts that in certain circumstances the use of such measures might be justified in order to limit the material injury to the domestic industry. It is, however, desirable that provisional measures are used sparingly and for the shortest possible time. Such measures should, therefore, not be introduced until the authorities concerned have carried out an initial investigation which reveals that there exists a serious case both as regards prices and injury. The provisional duties (or the security required) should not be greater than the margin of dumping shown by the available evidence. Furthermore, provision should exist for the repayment of provisional duties collected in excess of the amount of duty fixed in the final decision. The appraisement of the goods for the normal protective duties and the clearance of the goods should not be delayed as a means of taking provisional action.

VIII. Investigation procedures and procedural fairness

A. Initiation of investigation and consequences thereof

Applications for action against allegedly dumped imports should in general be made by the domestic producers of the like goods. In exceptional circumstances the authorities concerned might, however, be justified in initiating a dumping investigation (e.g. in case the dumping causes an increase in the subsidies granted to the domestic production). In such cases it seems to be desirable that the initiation and the ensuing investigation are made by separate branches of the administration.

All information provided on a confidential basis should be treated as strictly confidential by the authorities. This will on the other hand limit the possibilities of a broad publicity of the investigation. It might, however, be said that there is in general little need for publicity if a strict practice is established for notifying the exporters/importers and the authorities of the supplying country of the complaint (cf. point B below). A public notice might, however, be issued that a complaint of dumping has been adopted for investigation.

B. Finding of dumping and material injury

The foreign suppliers should be notified of the complaint directly or through the importers as soon as the authorities concerned are satisfied that there is a prima facie case for anti-dumping investigation. The exporters/importers should be given the opportunity of presenting their views on the relevant price information included in the prima facie evidence on dumping and encouraged to
give full details in the matter. When such a procedure is followed it might, however, be necessary to consider the question of taking provisional measures because of the risk of speculative buying and the possibilities of the exporters to drag out the proceedings.

It appears that the exporters/importers should preferably present their views and information in the form of written statements or in private hearings as public hearings will in most cases be incompatible with the need for confidential treatment of information.

The official representatives of the supplying countries should also be informed of the dumping complaint as early as possible.

If a decision is taken to impose anti-dumping duties, this should be published in an official form. The representatives of the governments concerned should be advised of the decision before it comes into effect.

C. Information gathering in country of export

Discussions and investigations "on the spot" may often prove to be a very useful and efficient way of clarifying the matter and collecting information. As mentioned in the report from the GATT Group of Experts such a procedure might, however, also raise delicate problems. Investigations in the exporting country should, therefore, in general be subject to the consent of the exporters and the representatives of the governments concerned.