VI. Anti-dumping duties

A. Imposition (1) obligatory or (2) permissive

The Canadian authorities believe that it is preferable to specify in public law the criteria which, taken together, create a liability to anti-dumping duty, rather than allow such a duty to be levied on the basis of administrative discretion. Any system of anti-dumping duties, however, should involve an element of permissiveness, in the sense that it should be open to the governmental authorities to exempt from anti-dumping duties particular imports or classes of imports. It should be legally possible to take such action by the exercise of discretionary power, even though all formal criteria requiring the levying of anti-dumping duties may apply. It is impossible to specify in law all the various economic criteria which may be relevant in each and every import transaction; accordingly, there is clearly a need for a residual or permissive power to exempt a given class of imports from anti-dumping duties if it is deemed to be in the public interest. The Canadian authorities believe that the discretion to exempt goods from anti-dumping duty should be exercised only at the highest level of government, and that when this discretion is exercised, it should be made public.

B. Applicability

1. All imports from all sources
2. Imports from country of origin of dumped goods
3. Individual exporter only.
The three sub-headings under this heading suggest to the Canadian authorities that two different types of action may be confused; the action which may be appropriate for a government to take to deal with imports that cause or threaten injury, although they are not being dumped, and the action which it may be appropriate to take in relation to dumped goods. To levy anti-dumping duty on imports of a given class from all sources or on all imports in the category at issue from the country of origin when it is found that some goods are being dumped would almost inevitably involve the levying of anti-dumping duty on goods which are not dumped or the levying of anti-dumping duty in an amount greater than the margin of dumping. The Canadian authorities believe that Article VI is not the section of the GATT which is appropriate to deal with imports which are not dumped but which cause or threaten injury. They are of the view that anti-dumping duties should be levied only on the import of goods which are actually being dumped and that the amount of anti-dumping duty should not be in excess of the margin of dumping. They would regard any other course of action as being in contravention of Article VI.

C. **Amount of duty**

The Canadian authorities believe that the provisions of paragraph 2 of Article VI provide sufficient guidance on this point.

D. **Retroactive application of duties**

In some countries, there is a direct link between the value for customs duty purposes and the current domestic value in the country of export for the purpose of assessing anti-dumping duties. As a consequence, an element of retroactivity is created by the legal provisions relating to the appraisal of the value for duty purposes and, of course, for appeal by the importer against the decisions of the customs appraiser. It should be recognized that to insist that anti-dumping duty should not be applied retroactively is to imply that, in order to deal with sporadic dumping, customs officers at ports of entry either must have an almost perfect knowledge of prices in all markets or provisionally apply anti-dumping duty in cases of doubt.

E. **Duration**

The Canadian authorities believe that anti-dumping duties should be levied only on the import of goods which are actually dumped and in an amount not greater than the margin of dumping. As long as this principle is applied, no question of duration of an anti-dumping levy should arise.
VII. Provisional duties

In terms of the impact on trade, there is little difference between the application of a provisional duty the definitive application of an anti-dumping duty, or the taking of an entry of goods which are suspected of being dumped subject to reappraisal until a determination is made on the question of injury. All these methods create an actual or contingent liability for the importer. Insofar as the introduction of a provisional duty would involve the exercise of an additional discretion, the Canadian authorities would wish to point out that, given the serious impact of anti-dumping duties on individual importers, it is important that the criteria which create a liability for anti-dumping duty be set out in law. In any case, the use of provisional anti-dumping duties should be limited to situations where it is deemed essential that temporary protection be provided during the period of investigation. They should be applied only where it is established that the goods are being dumped, and in no case should the amount of provisional duty be greater than the margin of dumping.

VIII. Investigation procedures and procedural fairness

As the initiation of anti-dumping investigations inevitably creates uncertainties and may hamper trade both as regards exporters and domestic producers, administrative procedures should be designed to operate as speedily as possible taking into account the need to have complete and accurate information in making decisions in this field.

A. Initiation of investigations and consequences thereof

The Canadian authorities believe that investigations of alleged dumping should only be initiated when evidence is available establishing a prima facie case.

(1) Publicity of investigation

As the Canadian authorities believe that anti-dumping duties should only be levied on the import of goods where dumping has been clearly established, there is no need for publicity of investigations beyond the notification at the outset of the inquiry, of the exporters and importers of the goods under investigation. Public announcements are likely to alarm other importers and users and so magnify the disruptive effects.

When the investigation is complete, all persons who were involved in the inquiry should be promptly advised of the decision.
(2) Confidential treatment of information

Authorities conducting investigations regarding dumping should accept information on a confidential basis. Information accepted on that basis should not be communicated beyond the responsible authorities without the permission of the person that made the submission. Where information is received in confidence, the investigating authorities have a special responsibility to ensure that it is complete and correct.

B. Finding of dumping and material injury

Opportunities given exporters

Exporters should be given an opportunity, if they so request, to appear before the investigating authorities to present their information or to make supplementary explanations. Authorities responsible for conducting dumping investigations should ensure that the exporters of the goods which are the subject of the inquiry understand what information is required and they should provide adequate time for its submission. Requests for information from exporters should be limited to that which is essential to establish whether the goods are being dumped and, if so, the margin of dumping.

Public hearings

Much of the information involved in anti-dumping inquiries is of a confidential nature which could not be presented at a public hearing. As a consequence, the Canadian authorities believe that public hearings are not appropriate to all phases of anti-dumping inquiries. The investigating authorities therefore have a special responsibility to ensure that all the parties involved have an adequate opportunity to present their case.

C. Information gathering in country of export

The Canadian authorities believe that on-the-spot investigations in the country of export by a qualified official of the government of the importing country is often the quickest, fairest and most effective way of establishing whether goods are being dumped, and if so, the margin of dumping.