GENERAL AGREEMENT ON
TARIFFS AND TRADE

Sub-Committee on Non-Tariff Barriers
Group on Anti-Dumping Policies

ANTI-DUMPING CODE

Memorandum by the Government of Canada

The Canadian authorities have reviewed the secretariat paper entitled "Possible Elements to be Considered for Inclusion in an Anti-Dumping Code" (TN.64/NTE/W/14). Set out below are their major desiderata for an effective international code. Canadian representatives will be commenting on the various other points in the course of the discussions scheduled to open on 21 February next in Geneva.

1. Initiation of investigations

The code should allow an investigation to be initiated either on the basis of an application by the firm or industry concerned or by the authorities themselves. The code should not indicate that the initiation of proceedings by the authorities themselves is limited to special circumstances.

Comments: The Canadian representatives have made clear that as a practical matter, anti-dumping investigations are instituted in Canada on the basis of a complaint or representation from or on behalf of some firm or industry which believes it is being injured. However, the Canadian authorities would not contemplate being bound to institute any sort of formal complaint procedure. This is for three reasons:

(1) In Canada, the legislation on combines and restrictive trade practices limits the scope of trade associations, as compared with, say, their rôle in Britain;

(2) it has been found that dumping is often being carried on by the customers of the Canadian producers who may make representations. These producers have emphasized that they could not be put in a position of having to complain formally about their customers' actions;

(3) the Canadian authorities consider that the problem of dumping between related firms is of considerable importance; in such cases of dumping it is unlikely that the industry being injured or those who might wish to establish a new industry, were it not for the dumping taking place, would have the necessary information for a formal complaint.
2. **Limitation of publicity**

The code should provide that there should be no publicity or public notice issued prior to the authorities making a tentative finding of dumping (i.e., sales of less than fair value). Prior to that point all investigations should be carried on a confidential basis and enquiries should be directed only to the importers and exporters concerned.

**Comments:** The adoption of such a provision would mean that, in the United States for example, the circular letter to importers which is now sent out when an anti-dumping complaint is received, the anti-dumping proceeding notice and the withholding of appraisement notice, as well as the press releases related to these notices, would not be issued. It is noted that in Britain a public notice is issued only following a tentative finding of dumping.

3. **Allowances for differences affecting price comparability**

The Canadian authorities believe that the various allowances, deductions, etc., made in the various valuation systems have to be evaluated collectively. It is unrealistic to contemplate reaching agreement in the code (2(F)) on each and every allowance to be considered and how it is to be calculated. Thus the phrase "due allowance" in the present draft should be retained, and the word "all" now in square brackets should be deleted.

The Canadian authorities consider that the code should provide for the use of anti-dumping duties to offset injurious "freight dumping".

4. **Imposition of provisional measures**

The code should provide that for such systems as involve the possible application of provisional measures, such measures should not apply earlier than the date of the tentative determination that dumping is occurring.

**Comments:** Such a provision as applied to, say, the present United States system would mean that the withholding of appraisement notice would not be issued until the notice of tentative determination that there are sales at less than fair value.

5. **Nature of provisional measures**

The code should not make any distinction between the various provisional measures, e.g., withholding of appraisement, the payment of a provisional duty subject to refund; the posting of a bond or security. This is a matter to be determined in the context of national legislative practices.
6. **Time-limit of investigation**

The code should provide that complaints that dumping has occurred and that such dumping is injurious should be investigated with all practicable speed. To this end the Canadian authorities propose that the code provide that national administrations must reach final determinations on the question of dumping (i.e. in the United States for example, final determinations that there are sales at less than fair value) no later than ninety days after the imposition of a provisional measure, (which as will be noted from 4 above, is not to be earlier than the date of tentative determination that dumping is occurring). Importers would thus have a firm assurance that the question of whether or not they are dumping would be disposed of within a fixed period of time following the application of a provisional measure.

**Comments:** This should be compared with current practice in certain countries in which long periods elapse between the application of a provisional measure and the final determination of dumping (sales at less than fair value). The acceptance of such a new element in national systems necessarily involves the acceptance that when exporters or importers (or the government of the exporting country) do not co-operate by providing necessary information, access to records, etc., the government of the importing country is free to reach a final determination.

7. **Time-limit on investigation into injury**

The code should provide that from the beginning of the investigation into whether or not injury is occurring or is threatened, a final determination must be reached and published within ninety days.

**Comments:** It will be noted that such a provision is now found in United States legislation. The Canadian authorities believe this is a useful concept which should be incorporated into the code.

8. **Timing of investigation into injury**

The code should provide that any investigation into injury must begin on the date at which a tentative determination is made that dumping is occurring. As will be noted from 4, 5, and 6 above, this would be also the earliest date on which a provisional measure may be applied.

**Comments:** It will be noted that such an obligation, together with those already set out above, would mean that an importer of goods believed to be dumping would have an assurance that no liability would be imposed for dumping duty prior to a tentative determination that there is dumping.
and that when such tentative determination is made, the questions of dumping and of injury would both be settled within ninety days. The Canadian authorities believe that this would be an acceptable and precise way of dealing with the question of "simultaneity" (see 7(a) of TN/64/NTB/N14). The Canadian authorities do not wish to preclude administrative arrangements which provide for the termination of investigations into dumping if the authorities are satisfied that there is no risk of injury; on the other hand, there may be some risk that if enquiry into injury is formally undertaken before a tentative determination of dumping is made, and there is provision for the issue of tentative decisions on injury, the pressure on importers to adjust prices before the enquiries into dumping injury are terminated will be much increased. Such a provision, when grafted on to certain anti-dumping systems, even as modified by the other provisions set out above, might well increase the harassment of importers and make certain existing anti-dumping systems more restrictive of legitimate trade.

9. Application of duties to goods imported prior to date of provisional measures

The Canadian authorities believe that only in the case of what has been called sporadic or one-shot dumping (which must be clearly defined in the code) should it be necessary for any government to apply an anti-dumping duty to imports which have taken place prior to the date of the application for a provisional measure, that is, the date of the tentative determination that dumping had occurred. In the case of threat or likelihood of injury, or of dumping which prevents the establishment of an industry, duties should not be applied prior to such determination of threat of injury.

Comments: The Canadian authorities note that such a provision would appear to be in conflict with present United States law particularly, in so far as regards transactions between related companies. The Canadian authorities believe that there is nothing in the nature of dumping between related companies that requires the application of a duty prior to the date of the tentative determination of dumping. Whether or not the question on the application of duties to imports prior to such date, in relation to "sporadic" dumping, should be provided for in the code under the provisions defining injury, or under the provisions dealing with retroactivity, is a matter to be considered in the light of the obligations which may be contemplated by other countries as to the application of duties to imports prior to the date of application of provisional measures. In this connexion, the Canadian authorities understand that under the United States law duties may, under certain conditions, be applied to imports which have taken place prior to the date of the withholding of appraisement, even though such transactions are between unrelated companies. This would appear to go much further than could possibly be required to deal with "sporadic" dumping.
10. **Definition of industry**

The code should provide that injury should be related to industry defined on a national basis, i.e. that the code should preclude the application of anti-dumping duties to protect producers in a region or market area which is only a part of a given customs territory.

11. **The responsibility for application of anti-dumping duties**

The Canadian authorities believe that as contemplated in the draft provisions (9A) the responsibility for the application of anti-dumping duty in any particular case is the responsibility of the national authorities. This implies that if a body established to investigate injury makes a wrong decision, the national authorities have the responsibility for ensuring that anti-dumping duty is applied only in circumstances specified in the code. This also implies that the enquiry into injury must be a factual one and cannot be pursued on the basis of adversary proceedings such as is customary in law courts.

12. **Review of anti-dumping duties**

The Canadian authorities believe that the code should provide that the authorities concerned must regularly review the need for the continued imposition of an anti-dumping duty, whether or not a review is requested by any interested party.

13. **Nature of injury**

The Canadian authorities are still considering, with industry representatives, the comments on the concept of injury as set out in the secretariat paper. They have directed their main attention to such rules regarding procedures as would mitigate the use of anti-dumping measures to restrict legitimate trade.

14. **Establishment of an injury tribunal**

The code should provide for the setting of a tribunal or investigating body or board to deal with the question of injury separately from the question of dumping.