REPORT OF THE ACTING CHAIRMAN OF
THE INFORMAL GROUP ON ANTI-DUMPING

Intensive discussions have been held during the course of the last four months on the many proposals made by participants for amendments to the Anti-Dumping Code. A full list of these proposals is contained in the attached compendium. In addition, I circulated the following text on 6 July 1990 in my capacity of acting Chairman of the Informal Group on Anti-Dumping and on my own responsibility. At the meeting of the Group in the week of 16 July 1990, many participants expressed the view that the text lacks balance. They could not, therefore, accept it as constituting a basis for negotiations. Other participants, while also expressing strong reservations about many points contained in the paper, indicated that they were prepared to negotiate from the following text. The Group is now in the process of hearing the views of participants on specific elements of the text. At the conclusion of this process, it is my intention in accordance with procedure previously agreed within the Group, to circulate a new text as soon as possible which, I hope, will constitute the basis for future work.

Part I

ANTI-DUMPING CODE*

Article 1

Principles

[To be added.]

Article 2

Determination of Dumping

2.1 For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one

*New text appears in bold.

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country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable and representative price of the like product when exported to an appropriate third country, or with the constructed value of the like product.

2.2.1 When, as a result of the existence of one of the situations referred to in this paragraph, the normal value of an imported product cannot be determined on the basis of the comparable price of the like product when destined for consumption in the exporting country, the authorities shall weigh the circumstances of each case in deciding

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1When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate, senior level.
whether to determine normal value on the basis of an export price to a third country or on the basis of a constructed value and provide an explanation of their decision in the public notice of the preliminary or final determination. The authorities shall give due consideration to the possibility of determining the normal value on the basis of an export price to a third country whenever the exporter or producer under investigation provides in a timely fashion information on the export price of a like product to a third country and (a) that like product is more like the product under investigation than the product exported to any other third country; (b) the volume of export sales to such a third country is large; and (c) the market in such a third country is comparable in its organization and structure to the market in the country of importation.

2.2.2 Sales of the like product in the domestic market of the exporting country at prices below per unit (fixed and variable) cost of production plus selling, general and administrative cost may be treated as not being in the ordinary course of trade if the authorities determine (a) that such sales are made over an extended period of time in substantial quantities and (b) that such sales are at prices which do not provide for recovery of all costs within a period of time which is reasonable for the product and industry under consideration.
2.2.2.1 The extended period of time may be as long as the investigation period (which, for the purpose of this Article, should normally be one year but shall in no case be less than six months) but shall in any event be representative of normal selling practices for the product under consideration and long enough to enable the authorities concerned to discern whether there is a consistent pattern of sales below per unit cost, as distinguished from infrequent sales below cost such as in the case of sales of end-of-year models or of obsolete products.

2.2.2.2 In determining whether sales in the domestic market are at prices below per unit costs, the authorities concerned shall satisfy themselves that the allocation of costs for the product under investigation is reasonable. As a rule, costs should be allocated in accordance with the generally accepted accounting principles of the exporting country, provided that these principles reasonably reflect the costs associated with the production and sale of that product. The authorities shall take into account independent evidence on the allocation of costs which is made available by the exporter or producer in the course of the investigation, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

2.2.2.3 When the actual costs incurred during the period of investigation are influenced by special circumstances of start-up production or of industries in a cyclical downturn, the authorities shall take account of such circumstances by calculating representative costs for a normal period.
2.2.2.4 In order to determine whether there are substantial quantities of sales at prices below per unit cost, the authorities shall consider whether during the extended period of time the weighted average selling price of all arm's length transactions is below the average unit cost and whether the volume of sales made at prices below unit cost represents a significant proportion of all sales at arm's length prices.

2.2.2.5 When, pursuant to this paragraph, sales in the domestic market are considered not to be in the ordinary course of trade, the public notices given upon the conclusion of the preliminary and final investigations shall contain a statement of reasons regarding the findings made by the investigating authorities under sub-paragraphs 2.1-4 above.

2.2.3 Sales of the like product in the ordinary course of trade destined for consumption in the domestic market of the exporting country should normally be considered insufficient to serve as a basis for comparison with the export price if the volume of such sales constitutes less than five per cent of total export sales of the like product.
2.2.4 For the purpose of paragraph 2, the constructed value shall be the cost of production in the country of origin of the like product of the exporter or producer under investigation plus a reasonable amount for administrative, selling and any other costs and for profits. The reasonable amount for administrative, selling and any other costs and for profits shall be based on actual data, as verified from the accounting records of the exporter or producer concerned, on the production and sale of the like product.

2.2.4.1 When the reasonable amount for profit cannot be determined on the basis of actual data regarding the production and sale of the like product by the exporter or producer under investigation, the amount for profit shall be based on:

(i) the actual profit realized by the same exporter or producer in respect of the production and sale of products of the same general category in the domestic market of the country of origin, or

(ii) actual and verified data regarding representative profits normally realized by other producers in respect of the production and sale of the like product in the domestic market of the country of origin, or
(iii) actual and verified data regarding representative profits normally realized by other producers in respect of the production and sale of products of the same general category in the domestic market of the country of origin.

When profit data of other producers are used, the authorities shall provide the exporter or producer in question with an opportunity to comment on such data. The authorities shall provide an explanation of the reasons for the choice of one of the methods mentioned in this sub-paragraph in the public notices given upon the conclusion of the preliminary and final investigations.

2.2.4.2 The provisions of sub-paragraphs 2.2.2.2 and 2.2.2.3 above shall apply to cost calculations under this sub-paragraph.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the product is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement. The two prices shall be compared at the same level of trade, normally at the ex-factory level and in respect of sales made at as nearly as possible the same time. The authorities shall make due allowance in each case, on its merits, for the differences in conditions and terms of sale, the differences in taxation, and for all other differences affecting price comparability, including differences in levels of trade, quantities and physical characteristics. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.
2.4.1 In the cases referred to in paragraph 2.3, allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made, provided that the allowance for such costs shall not affect the comparability of the constructed export price and the normal value. When the export price has been constructed pursuant to paragraph 2.3 and price comparability has been affected, the authorities shall ensure symmetry with regard to levels of trade by establishing the normal value at a level of trade equivalent to the level of trade of the constructed export price.

2.4.2 When the price comparison under this paragraph requires a conversion of currencies, such conversion should as a rule be made at the exchange rate actually used by the exporter or producer under investigation (including exchange rates secured through the forward currency market). The authorities should ensure that margins of dumping do not result from movements of exchange rates during the investigation period to which the exporter or producer could not reasonably be expected to adjust the price of the exported product. The authorities should ignore the effects on the margins of dumping of temporary exchange rate fluctuations.

2.4.3 In cases where prices vary in both the exporting and importing country, the authorities shall in the calculation of the margin of dumping use neutral methods which are representative of the patterns of levels and movements of prices in the two markets under consideration. The authorities shall in particular ensure that no margins of dumping are found when there are similar patterns of levels and movements of prices in the two markets. Normal value and export prices shall, as a rule, be established on a weighted average basis. However, export prices may be established on a transaction-by-transaction basis when a significant proportion of export sales is made at prices X per cent or more below the weighted average export price or when prices to specific customers or to different regions within the importing country, or during certain periods, vary to a significant degree.
2.5 In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the intermediate country to the country of importation shall normally be compared with the comparable price in such an intermediate country. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the intermediate country, or such products are not produced in the intermediate country, or there is no comparable price for them in the intermediate country.

2.6 Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which although not alike in all respects, has both physical, technical and/or chemical characteristics and applications or uses closely resembling those of the product under consideration. Minor variations among these products, such as those resulting from changes in fashion, and quality differences shall not preclude a finding that products are like within the meaning of this paragraph. Slightly altered or later developed versions of a product may be like that product if the above-mentioned criteria are met.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to the General Agreement.
3.1 A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree: in this connection, the authorities shall consider how the price effect of the dumped imports relates to the margin of dumping. They shall also consider any evidence that prices of the dumped imports are influenced by a clearly discernible pattern of price leadership by domestic producers of the like product or by exporters of the like product not subject to investigation. No one or several of these factors can necessarily give decisive guidance.

\footnote{Under this Code the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.}
3.3 When imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the authorities may cumulatively assess the effects of such imports only if they determine that (1) the margins of dumping established in relation to the imports from each exporter or producer are more than de minimis and the volume of imports from each country is not negligible, as defined in Article 5:7 and (2) the imported products compete with each other and with the like domestic product.

3.4 The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects\(^3\) of dumping, causing injury within the meaning of this Code. The demonstration of the existence of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on positive evidence and not on mere assumption. The authorities shall consider whether there are other factors\(^4\) which at the same time are injuring the

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\(^3\) As set forth in paragraphs 2 and 4 of this Article.

\(^4\) Such factors include, *inter alia*, the volume and prices of imports not sold at dumping prices *regardless of their origin, including from an exporting country subject to investigation*, contraction in demand or changes in the patterns of consumption, the *nature and extent of competition in the domestic market among domestic producers in the industry as a whole* and between the foreign and domestic producers, *changes or developments in technology* and the *export performance and productivity of the domestic industry*. 
industry, and the injuries caused by other factors must not be attributed to the dumped imports. *Determinations of injury shall contain explanations of how such factors have been considered.*

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production. When the domestic production of the like product has no separate identity, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 The authorities shall examine with special care the evidence of injury in a case where the product under investigation is subject to quantitative import restrictions.

3.8 A determination of the existence of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

3.8.1 In making a determination regarding the existence of a threat of material injury, the authorities should consider *inter alia* such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importations thereof;
(ii) sufficient freely disposable capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing country's market taking into account the availability of other export markets to absorb any additional exports;

(iii) whether exports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further exports; and

(iv) inventories in the importing country of the product being investigated.

It is understood that no one of these factors by itself can necessarily give decisive guidance but that the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that unless protective action is taken, material injury would occur.

3.9 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.
Article 4

Definition of Industry

4.1 For the purpose of this Code, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that

(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers;

(ii) in exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be determined to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

The term "a major proportion" shall be interpreted as meaning at least [X] per cent by value of total domestic production of the like product.
4.2 When the industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied\(^6\) only on the products in question consigned for final consumption to that area. When the constitutional law of the importing country does not permit the levying of anti-dumping duties on such a basis, the importing Party may levy the anti-dumping duties without limitation only if (1) the exporters have been given an opportunity to cease dumping in the area concerned or otherwise give assurances pursuant to Article 8 of this Code, and adequate assurances in this regard have not been promptly given, and (2) such duties cannot be levied on specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the industry referred to in paragraph 1 above.

4.4 For the purpose of this Code, producers shall be deemed to be related to exporters of importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this Code, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

4.5 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

\(^6\)As used in this Code "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.
Article 5

Initiation of anti-dumping investigations

5.1 An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry affected. The request shall include sufficient evidence of (a) dumping, (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Code and (c) a causal link between the dumped imports and the alleged injury.

5.1.1 A request within the meaning of Article 5:1 shall be properly documented and contain in particular information which can reasonably be expected to be available to the complainant on the following:

(i) identity of the complainant and a description of the volume and value of the domestic production of the like product by the complainant. Where a written request is made on behalf of the domestic industry, the request shall identify the industry on behalf of which the request is made on the basis of a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of export or origin in question, the identity of each exporter or foreign producer alleged to be dumping and a list of known persons importing the product in question;

As defined in Article 4.
(iii) information on prices at which the product in question is sold for consumption in the domestic markets of the country or countries of origin (or, where appropriate, information on the prices at which the product is sold from the country of origin to a third country or countries or on the constructed value of the product) and information on actual export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the importing country;

(iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry concerned, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in Article 3:4 and 3:5.

5.2 The authorities shall review the adequacy of the evidence provided in the request for the initiation of an investigation in light of any relevant and readily available information and determine whether the evidence is sufficient to justify the opening of an investigation.

5.3 The authorities shall not initiate an investigation pursuant to Article 5:1 unless they are satisfied, on the basis of positive evidence, that the written request for the initiation of an investigation is supported by the domestic industry.

5.4 The authorities concerned shall avoid, unless a decision has been made to open an investigation, any publicizing of the request for the initiation of an investigation or its release.

5.5 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written request by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence as described in sub-paragraphs 5.1.1 (ii)-(iv) to justify the initiation of an investigation.
5.6 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Code provisional measures may be applied.

5.7 A written request under Article 5:1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping is *de minimis* or the volume of dumped imports, actual or potential, or the injury is negligible. For the purpose of this Code, the margin of dumping shall be considered to be *de minimis* if this margin is less than X cent cent ad valorem for homogeneous products sold in bulk or Y per cent ad valorem for other products. The volume of the dumped imports shall be considered to be negligible if this volume represents less than A per cent of the domestic market for the like product in the importing country, unless imports from countries whose individual shares represent less than A per cent collectively account for more than B per cent of the domestic market for the like product in the importing country.

5.8 The authorities shall normally initiate an investigation with respect to imports of a product subject to quantitative import restrictions only when there is substantial evidence that dumped imports of such a product are causing injury to the domestic industry producing the like product. In this context, the authorities shall take account of the restrictive effects of such quantitative import restrictions.

5.9 The authorities shall exclude from the investigation any country through which the products under investigation are merely trans-shipped.
5.10 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.11 Investigations shall, except in special circumstances, be concluded within one year after their initiation.
Article 6

Evidence

6.1 All interested parties in an anti-dumping investigation shall be given ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Respondents to questionnaires used in an anti-dumping investigation shall be given at least thirty days for reply. Due consideration should be given to any request for an extension of the thirty day period and, upon cause shown, such an extension should be granted whenever possible.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 The authorities shall provide the full text of the written request received under Article 5:1 to the exporters and to the authorities of the exporting country and make it available, upon request, to other interested parties involved as soon as a decision has been made to open an investigation, due regard being paid to the requirement for the protection of confidential information. In cases where confidential information is provided in the written request, authorities shall require a non-confidential summary of such information in the non-confidential copy. The possibility of not

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8 As a general rule, the time limit for exporters shall be counted from the date of the receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country.

9 It being understood that, where the number of exporters involved is particularly high, the full text of the request should instead be provided only to the authorities of the exporting country or to the relevant trade association.
providing a summary of confidential information shall be confined to extremely exceptional cases and in such cases the authorities shall fully explain the reasons therefor.

6.2 Interested parties shall also have the right, on justification, to present information orally. Where such information is provided orally, interested parties subsequently shall be required to reduce such submissions in writing. The authorities shall prepare or cause to be prepared a summary of all other oral submissions. Subject to the requirement to protect confidential information, the authorities shall make these summaries available to interested parties participating in the investigation.

6.3 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5 below and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.4 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party’s case.

6.5 Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom
he acquired the information) or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it.  

6.5.1 The authorities shall either require interested parties providing confidential information to furnish non-confidential summaries thereof or shall prepare such summaries. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

6.6 In order to verify information provided or to obtain further details, the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation. The procedures described in Annex 1 shall apply to verifications carried out in exporting countries. The authorities shall make the reports of any

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10 Parties are aware that in the territory of certain Parties disclosure pursuant to a narrowly drawn protective order may be required.

11 Parties agree that requests for confidentiality should not be arbitrarily rejected.
verifications available to the firms to which they pertain and may, subject to the requirement to protect confidential information, make such reports available to the complainants.

6.7 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.8 Before final determinations are made, investigating authorities shall inform all interested parties of the essential facts and considerations on the basis of which it is intended to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.9 The authorities shall, as a rule, determine individual margins of dumping for each exporter or producer concerned of the product under investigation. When an exceptional number of exporters, producers or products is involved, the authorities may, through the use of statistically valid sampling techniques, limit the investigation to a representative number of exporters, producers or products. Any sample used for this purpose shall preferably be established with the consent of the exporters concerned. In case where a sample is used for the purpose of limiting the number of exporters or producers investigated, the authorities should, to the extent possible, determine an individual margin of dumping for any exporter or producer not covered by the sample who submits the necessary information in a timely fashion.

6.10 For the purpose of this Article, "interested parties" shall include:

(i) a foreign producer or exporter or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
(ii) the government of the country in which such product is produced; and

(iii) a producer of the like product in the importing country or a trade and business association a majority of the members of which produce the like product in the importing country.

This list shall not preclude Parties from allowing domestic or foreign parties other than those mentioned above to participate in the investigation.

6.11 The authorities shall provide opportunities for industrial users of the product under investigation and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide any information relevant to the investigation regarding dumping, injury and causality.

6.12 In carrying out investigations under this Code, the authorities shall take due account of any difficulties experienced by small companies in supplying information requested and provide any assistance practicable.

6.13 The procedures set out above are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Code.
Article 7

Provisional Measures

7.1 Provisional measures may be applied only if:

(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

(ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and

(iii) the authorities concerned judge such measures necessary to prevent injury being caused during the period of investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation, except that when there is a likelihood of the existence of a situation described in sub-paragraph 1.3 of Article 10, the authorities may take such provisional measures on the date of the initiation of the investigation as may be necessary to ensure that definitive anti-dumping duties can be levied retroactively from that date.
7.4 The **application** of provisional measures shall be limited to as short a period as possible, not exceeding X months **or, in exceptional cases, not exceeding Y months**.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.
Article 8

Price Undertakings

8.1 Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease dumping so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry. The authorities should not accept undertakings which provide for quantitative restrictions.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country have made a preliminary affirmative determination of dumping and injury caused by such dumping, in the course of an investigation initiated and conducted in accordance with the provisions of Articles 5 and 6.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which might lead them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of injury or threat

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12 The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 3.
thereof is made, the undertaking shall automatically lapse except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Code. In the event an affirmative determination of injury or threat thereof is made, the undertaking shall continue consistent with the provisions of this Code.

8.5 Authorities of an importing country may require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing country may take, under this Code in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Code on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

8.6 Undertakings shall not remain in force any longer than anti-dumping duties could remain in force under this Code. The authorities of an importing country shall review the need for the continuation of any price undertaking, where warranted, on their own initiative or if interested parties so request and submit positive information substantiating the need for such a review.
Article 9

Imposition and collection of anti-dumping duties

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings under the terms of this Code have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.
9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible and, as a rule, not later than X months after the importation of the product subject to the anti-dumping duty.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for the prompt refund of any duties paid in excess of the actual dumping margin. As a rule, such reimbursement shall take place not later than Y months after the exporter has made a request for such refund.

9.3.3 In the application of this paragraph any (advance) anti-dumping duty paid shall be treated as follows:

[to be added]

9.4 Any anti-dumping duty applied to imports from exporters or producers not identified at the time of the investigation, or from exporters or producers not covered by samples referred to in Article 6:2, shall not be higher than the weighted average duty established with respect to all exporters investigated.

9.5 Any exporter or producer whose exports are subject to a definitive anti-dumping duty but who was not actually investigated shall be entitled to an expedited investigation or review in order that the authorities promptly establish an individual anti-dumping duty rate for that exporter or exempt the exporter from the application of such a duty. Any such expedited investigation or review shall be conducted as soon as possible after the exporter has provided the necessary information and shall, as a rule, be concluded within X months after the date on which a request for such an investigation or review was made.
10.1 Anti-dumping duties and provisional measures shall only be applied to products which enter for consumption after the time when the decision taken under Article 7:1 and Article 9:1, respectively, enters into force, subject to the exceptions set out below.

10.1.1 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, when the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied. If the anti-dumping duty fixed in the final decision is higher than the provisionally paid duty, the difference shall not be collected. If the duty fixed in the final decision is lower than the provisionally paid duty or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.1.2 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was or, in view of the particularly high dumping margins, should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
(ii) the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short time) which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to postpone the remedial effect of any definitive anti-dumping duty, provided that the importers concerned have been given an opportunity to comment.

10.1.3 A definitive anti-dumping duty may be applied retroactively for the period for which provisional measures, if any, have been applied, irrespective of whether the final determination of injury is based on a threat of injury or on a material retardation of the establishment of an industry, if the authorities make a final affirmative determination of dumping and injury, and such a determination is made with respect to a product the exporter or producer of which, or a party related to the exporter or producer, has been subject, over the last X years, to Y or more definitive anti-dumping duties or price undertakings in the importing country and an individual margin of dumping was found in each final determination of dumping (or, in the case of a price undertaking, preliminary determination of dumping) which was equal to or exceeded Z per cent ad valorem, and such definitive anti-dumping duties or price undertakings all apply to products of the same general category to which the determination applies.

10.1.4 Sub-paragraph 10.1.3 shall not apply to definitive anti-dumping duties and price undertakings imposed or accepted before ........

10.2 Except as provided in paragraph 1 above, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.
10.3 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.
11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for a review. In such a review, the authorities shall in particular examine whether the continued imposition of the duty is necessary to offset injurious dumping. If subsequent to a review under this paragraph the evidence discloses that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated within 5 years of its imposition, unless the authorities determine on the basis of a review carried out before the date of termination that there is good cause for the continuation of the anti-dumping duty, after all parties referred to in Article 6:10 and 11 have had a full opportunity to present information.
Article 12

Measures to prevent circumvention of definitive anti-dumping duties

12.1 The authorities may include within the scope of application of a definitive anti-dumping duty on an imported product parts or components destined for assembly or completion in the importing country, provided that:

(i) a product assembled or completed from such parts or components in the importing country is like the product the importation of which is subject to the definitive anti-dumping duty;

(ii) the assembly or completion operation of the like product in the importing country is carried out by a party which is related to or has contractual arrangements with an exporter or producer whose exports of the product in question are subject to a definitive anti-dumping duty;

(iii) the value of the imported parts or components used in the assembly or completion of the like product and originating in the country to which the definitive anti-dumping duty applies is equal to or exceeds X per cent of the total value of the like product assembled or completed in the importing country;

(iv) the most significant parts or components used in the assembly or completion of the like product in the importing country originate in the country to which the definitive anti-dumping duty applies;

(v) there is positive evidence that imports of parts or components originating in the country to which the definitive anti-dumping duty applies and destined for use in the assembly or completion in the importing country, and the assembly or completion
operations carried out by a party referred to in sub-paragraph 1(ii) have started or increased substantially since the imposition of the definitive anti-dumping duty.

12.2 The authorities may include within the scope of application of a definitive anti-dumping duty on an imported product a product assembled or completed in a country other than the country to which such duty applies, provided that:

(i) the product assembled or completed in the third country is like the product the importation of which is subject to the definitive anti-dumping duty;

(ii) the assembly or completion operation of the like product in the third country is carried out by a party which is related to or has contractual arrangements with an exporter or producer whose exports of the product in question are subject to a definitive anti-dumping duty;

(iii) the value of the parts or components used in the assembly or completion operation in the third country and originating in the country to which the definitive anti-dumping duty applies is equal to or exceeds X per cent of the total value of the like product assembled or completed in the third country; and

(iv) the most significant parts or components used in the assembly or completion of the like product in the third country originate in the country to which the definitive anti-dumping duty applies; and

(v) there is positive evidence that imports of parts or components originating in the country to which the definitive anti-dumping duty applies into the third country, assembly or completion operations carried out in the third country by a party referred to in sub-paragraph 2(ii), and exports from the third country to
the importing country of the product assembled or completed in the third country have started or increased substantially since the imposition of the definitive anti-dumping duty.

12.3 The authorities may extend the application of a definitive anti-dumping duty under paragraph 1 to imports of parts or components of the product subject to such duty, or extend the application of a definitive anti-dumping duty under paragraph 2 to a product assembled or completed in a third country only if they determine that such an extension is consistent with the prior determination of injury to the domestic industry producing a product like the imported product which is subject to a definitive anti-dumping duty.

12.4 Measures provided for in paragraphs 1-3 may be applied only if the authorities concerned have carried out formal investigations to determine whether the conditions set out in paragraphs 1-3 are fulfilled. The provisions of this Code concerning initiation of investigations, rights of interested parties and public notice shall apply mutatis mutandis to investigations carried out under this Article.

12.5 Notwithstanding the provisions of Article 7, the authorities may on the date of the initiation of an investigation, to be conducted in accordance with all relevant provisions of this Code, take those provisional measures, such as withholding of appraisement, which may be necessary to ensure that definitive anti-dumping duties can be levied retroactively, if the investigation concerns:
(i) parts or components exported to the importing country by a producer of a product subject to a definitive anti-dumping duty in the importing country and destined for assembly or completion in the importing country by a party related to such producer into a product like the product subject to the definitive anti-dumping duty, and the value of such parts or components is less than X per cent but more than Y per cent of the total value of the product assembled or completed in the importing country; or

(ii) a product which is like a product subject to a definitive anti-dumping duty in the importing country and imported from a third country after having been assembled or completed in such a third country by a party related to the producer of the product to which the definitive anti-dumping duty applies from parts or components exported by that producer to such third country, and the value of those parts or components is less than X per cent but more than Y per cent of the total value of the product assembled or completed in the third country; or

(iii) a product which is like a product subject to a definitive anti-dumping duty in the importing country and which is exported from a third country by a party related to the producer subject to such a definitive anti-dumping duty, and there is positive evidence that such exports from the third country have increased substantially since the imposition of the definitive anti-dumping duty.

(iv) a product which incorporates as a major input a product subject to a definitive anti-dumping duty in the importing country in excess of Y per cent ad valorem and such a product is exported by a producer related to the producer in the same exporting country of such a major input and there is positive evidence that exports of the product incorporating the product subject to the definitive anti-dumping duty have increased substantially since the imposition of the definitive anti-dumping duty;
(v) a product which incorporates as a major input a product subject to a definitive anti-dumping duty in the importing country in excess of Y per cent ad valorem and such a product is exported by a producer related to the producer in a third country of such a major input and there is positive evidence that exports of the product incorporating the product subject to the definitive anti-dumping duty have increased substantially since the imposition of the definitive anti-dumping duty.

12.6 If, in any of the cases referred to in paragraph 5, a final affirmative determination of dumping and injury is made, definitive anti-dumping duties may be applied retroactively for the period for which provisional measures have been applied, irrespective of whether the final determination of injury is based on a threat of injury or on a material retardation of the establishment of an industry.

12.7 For the purpose of paragraph 5(iv) and (v), a product is a major input in another product if that input represents at least X per cent of the total value of the product into which that input has been incorporated.
Article 13

Public notice and explanation of determinations

13.1 When the competent authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Party or Parties the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

13.1.1 A public notice of the initiation of an investigation shall contain adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the complaint;

(iv) a summary of the factors which have led to the allegation of injury;

(v) the address to which representations by interested parties should be directed;

(vi) the time-limits allowed to interested parties for making their views known.

13.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the revocation of a determination. Each such notice
shall set forth the findings and conclusions in sufficient detail reached on all issues of fact and law considered material by the investigating authorities and shall be forwarded to the Party or Parties the products of which are subject to such finding or undertaking and to other interested parties known to have an interest therein.

13.2.1 A public notice of the imposition of provisional measures shall set forth sufficiently detailed explanations for the preliminary determinations on dumping and injury (insofar as there is no separate preliminary injury determination and a notice thereof) and shall refer to the matters of fact and law which have led to arguments being accepted or rejected, due regard being paid to the requirement for the protection of confidential information; it shall in particular contain:

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product, which is sufficient for customs purposes;

(iii) the margins of dumping established and the basis on which the dumping calculations have been made;

(iv) factors which have led to the injury determination, including factors other than dumping which have been taken into account in the injury determination (insofar as there is no separate notice concerning such injury determination);

(v) the main reasons leading to the determination.

13.2.2 A public notice of suspension or conclusion of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or a price undertaking shall contain
all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information; it shall in particular contain the information described in paragraph 2(i-v) as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers.

13.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include the non-confidential part of the undertaking.

13.3 The provisions of this Article shall apply mutatis mutandis to the initiation and completion of administrative reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.
Article 14

Judicial Review

Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Articles .... of this Agreement. Such tribunals or procedures shall be completely independent of the authorities responsible for the determination or review in question.
Article 15

Anti-dumping action on behalf of a Third Country

15.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

15.2 Such an application 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 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.

15.3 The authorities of the importing country in considering such an application 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 importing country or even on the industry's total exports.

15.4 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 shall rest with the importing country.
Article 16

Developing Countries*

It is recognized that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code. Possibilities of constructive remedies provided for by this Code shall be explored before applying anti-dumping duties where they would affect the essential interests of developing countries.

*It remains for consideration whether the Decisions taken by the Committee on Anti-Dumping Practices in May 1980 (ADP/2) should be included here.
PART II

Article 17

Committee on Anti-Dumping Practices

[To be added.]

Article 18

Consultations, conciliation and dispute settlement

[To be added.]

PART III

Final Provisions

[To be added.]
ANNEX I

Procedures for on-the-spot investigations pursuant to Article 6:6

1. Upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting country before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained the investigating authorities should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if the authorities of the importing country notify the representatives of the government of the country in question and unless the latter do not object to the visit.
7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.
ANNEX II

Best information available in terms of Article 6:7

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the way in which that information should be structured by the interested party in its response. The investigating authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the investigating authorities will be free to make determinations on the basis of the facts available, including those contained in the request for the initiation of the investigation by the domestic industry.

2. The investigating authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the investigating authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The investigating authority should not maintain a request for response in a particular medium or computer language, and the response need not be given in that particular medium or computer language, if the interested party does not maintain computerized accounts or if presenting the response in a particular medium or computer language would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the investigating authorities, should be taken into account when determinations are made. If a party
does not respond in the preferred medium or computer language because of the circumstances set out in paragraph 2, this should not be considered to significantly impede the investigation.

4. Where the investigating authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape) the information should be supplied in the form of written material or any other form acceptable to the investigating authorities.

5. Even though the information provided may not be ideal in all respects this factor, in itself, should not justify the investigating authorities from disregarding it since the interested party may have acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the investigating authorities as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the investigating authorities have to base their determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the request for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should check the reasonableness of the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not co-operate and thus relevant information is being withheld from the authorities this situation could lead to a result which is less favourable to the party than if the party did co-operate.
ATTACHMENT TO MTN.GNG/NG8/W/83/ADD.5

Compendium of Drafting Proposals for Modifications to the Agreement on Implementation of Article VI of the General Agreement (Anti-Dumping Code)
Preamble

The Parties to this Agreement (hereinafter referred to as Parties*).

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Recognizing that anti-dumping duties may be applied against dumped imports only if such dumping causes or threatens material injury to an established industry or materially retards the establishment of an industry.

Recognizing that pricing decisions in accordance with customary business practice and commercial considerations and price adjustments to meet prevailing price
Preamble

Affirming that it is preferable to deter dumping and that, in order to do so, it may be necessary to impose stricter standards in situations where recurrent injurious dumping or repeat corporate dumping exist or are likely to exist:

Recognizing that anti-dumping practices should not constitute an unjustifiable impediment to international trade and that anti-dumping duties may be applied against dumping only if a causal relationship can be clearly established between such dumping and material injury or threat of material injury to an established industry or the material retardation of the establishment of an industry.
competing in the importing country do not constitute unfair trade practices and are not condemned under Article VI and that fair trade practices do not give rise to imposition of anti-dumping duties.

Recognizing that anti-dumping practices constitute exceptions to basic principles of the General Agreement on Tariffs and Trade and must be subject to rigorous disciplines and restraint in order to prevent abuse.

Considering that it is desirable to provide for equitable and open procedures as the basis for a full examination of dumping cases;

Taking into account the particular trade, development and financial needs of developing countries;
MODIFICATIONS PROPOSED BY USA

MODIFICATIONS PROPOSED BY EEC

MODIFICATIONS PROPOSED BY NORDIC COUNTRIES

MODIFICATIONS PROPOSED BY CANADA
Desiring to interpret the provisions of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT") and to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation; and

Desiring to provide for the speedy, effective and equitable settlement of disputes arising under this agreement;

Hereby agree as follows:
Recognizing that price competition is legitimate in international trade and that a precondition for dumping is the existence of market isolation or similar market conditions in the exporting country.

Recognizing that the imposition of anti-dumping measures should be considered within the broader context of their impact on the economy as a whole.
ANTI-DUMPING CODE

MODIFICATIONS PROPOSED BY HONG KONG

MODIFICATIONS PROPOSED BY REPUBLIC OF KOREA

MODIFICATIONS PROPOSED BY JAPAN

Article I - Principles

The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated (footnote: The term "initiated" as used hereinafter means the procedural action by which a Party formally commences an investigation as provided in paragraph 6 of Article 6) and conducted in accordance with the provisions of this Code. Anti-dumping duties are a remedy for injurious price discrimination and shall not be applied in cases where price levels derive exclusively or mainly from the operation of comparative advantage. No anti-dumping action shall lead to local content requirements, quantitative restrictions or protect price cartels and other trade practices which restrict competition in the importing country.

The following provisions govern the application of Article VI of the General Agreement in so far as action is taken under anti-dumping legislation or regulations.
The imposition of an anti-dumping duty is a measure to be taken only under the circumstances provided for in Article VI of the General Agreement and pursuant to investigations initiated and conducted in accordance with the provisions of this Code. Anti-dumping measures ought not be taken unless the investigation indicates that there exist considerable impediments to the importation of like products in the exporting country. The following provisions govern the application of Article VI of the General Agreement in so far as action is taken under anti-dumping legislation or regulations.
Article 2 - Determination of Dumping

1. For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

Footnote to Art. 2:1: 1. A product shall not be considered to have been introduced into the commerce of a country unless the product has been imported into such country, or a contract has been made for the importation of the product into such country. The fact that the product has been offered for sale in a country, whether or not the offer was irrevocable, shall not be sufficient for the product to be considered to have been "introduced into the commerce" of that country.

Footnotes to Art. 2:1: 1. As a general rule, when the product concerned has not been actually imported, the product shall not be considered as being introduced into the commerce of another country.

2. Where two or more countries have reached under the provisions of Article XXIV:8 (a) of the General Agreement such a level of integration that they have the characteristics of a single, unified market, the entire area of integration may be regarded as a country in the interpretation of this Code.
Article 2 - Determination of Dumping

1. For the purpose of this Code a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, (footnote: A price shall be deemed to be set in the ordinary course of trade if that price reflects normal business activities and the commercial strategy of the investigated firm, or of producers in the exporting country of the same general category of goods. Sales at a loss even over extended periods of time shall be deemed to be in the ordinary course of trade if such sales result from market assessment and business strategies. A price shall not be deemed to be established in the ordinary course of trade in the following cases: (list to be established.) for the like product when destined for consumption in the exporting country.)
2. Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Footnote to Art. 2:2:
1. Components or parts shall not be considered like products to the product produced from the components or parts ("finished product") unless each component or part, considered individually, has characteristics closely resembling those of the finished product. No anti-dumping duties may be imposed upon imports of components or parts based solely on findings of (1) dumping of the finished product, and (2) material injury or threat of material injury to the domestic industry producing the finished product, unless the components or parts are found to be like products to the finished product. In addition, no anti-dumping duties may be imposed upon imports of a finished product based solely on findings (1) dumping of a component or part, and (2) material injury or threat of material injury to the domestic industry producing component or part, unless the finished product is found to be like product to component or part.
2. Throughout this Code the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects, has both physical, technical and/or chemical characteristics and applications or uses closely resembling those of the product under consideration. Minor variations among these products and quality differences shall not affect the "like product" determination.

Footnote to Art. 2:2: In the course of an investigation the interpretation of the investigating authority of the term "like product" shall be uniform and consistent.
3. In the case where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the price at which the products are sold from the country of export to the country of importation shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely trans-shipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.
intermediate country from parts or components produced in, or exported from, a country whose exports of the product, or of the parts or components of the product, are subject to anti-dumping duties in the investigating country shall not be subject to anti-dumping duties by the investigating country unless it is found that imports of the product from the intermediate country are being dumped in the investigating country and that such imports are causing or threatening material injury to the domestic industry producing the like product in the investigating country.
MODIFICATIONS PROPOSED BY USA
MODIFICATIONS PROPOSED BY EEC
MODIFICATIONS PROPOSED BY NORDIC COUNTRIES
MODIFICATIONS PROPOSED BY CANADA
4. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

4. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.
4. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and any other costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin. Where there is a likelihood of recurrent injurious dumping, of the type defined in paragraphs 4(iv) and 4(v) of Article 5, the cost of production of the like product shall include the cost of production of the major input product, provided that such cost is greater than what the value of the input would have been in an arm's length transaction.

Footnotes to be added to the first sentence of Art. 2:4:
1. Sales on the domestic market shall be understood not to permit a proper comparison when the quantity of domestic sales constitutes less than X% of the quantity of the product under consideration sold for export to the country of importation.
2. In cases where there are no or insufficient sales of the product under consideration on the domestic market of the exporting country and where the producer is a subsidiary of a corporation operating in more than one country, the prices of the parent corporation selling the same product on its home market can be used to calculate normal value, taking account of all relevant differences in costs.

4. In determining whether there are comparable sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when these sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to any third country which may be the highest such export price but should be a representative price, or with the average price of the like product in all export sales to third countries of the investigated firm.
the market of the
importing country.)
sales of the like product
in the ordinary course
of trade to any third
country, the margin of
dumping shall be
determined by
comparison with the
cost of production of
the exported product of
the exporter under
investigation in the
country of origin plus a
reasonable amount for
administrative, selling
and any other costs and
for profits. The addition
for profit shall not
exceed the profit
realized by the
exporter under
investigation on sales
of products of the same
general category in the
domestic market of the
country of origin. If
the exporter under
investigation has no
sales of products of the
same general category
in the country of origin,
the addition for profit
shall not exceed the
overall profit realized
by the company.

exported to a third
country selected on the
basis of the following
criteria:
(a) the product
exported to such third
country has a greater
degree of similarity to
the product exported to
the country of
importation than the
product exported to
other third countries;
(b) the volume of sales
by quantity to such
third country is the
largest sales volume to
any third country; and
(c) the market in such
third country is most
comparable, in terms of
its organization and
structure, to the
market in the country
of importation of the
product under
consideration.

Footnote to Art.2:4:
1. The amount for
administrative, selling
and other costs shall be
based on the actual
costs incurred by the
exporter in the
domestic market of the
country of origin.

the profit realized on
sales of the product of
the same general
category in the
domestic market of the
exporter concerned. If this
profit is not available,
but the profit normally
realized on sales of like
products in the
domestic market
including other
exporters is available, the
calculation shall be
based on the latter. In
the case where the
profits of other
exporters are taken, the profit
shall not exceed the
weighted average of the
profits of these
exporters. Moreover,
in case of (b), below-
the-cost sales shall be
excluded in the
calculation except for
those under specific
circumstances where
below-the-cost sales
are conducted for an
extended period of time
in substantial
quantities, at prices not
capable of recovering
costs within a
reasonable period of
time.
on actual amounts, as verified by the investigating authorities, pertaining to the production and sale of the like good.

(Footnote to Art. 2:4: It is recognized that, in exceptional circumstances, the amount for profit may not always be available and verifiable, or there may be an insufficient number of sales on which profit may be established. In such circumstances, the addition for profit shall be (a) determined on the basis of the amount of profits realized on sales of the like good by other producers in the domestic market of the country of origin, or (b) in the absence of a sufficient number of sales of the like good by other producers, the amount of profit realized on sales of products of the same general category by the exporter, or alternatively by other producers, in the domestic market of the country of origin.)
New Article 2:7:
7. Whenever it can be shown by the administering authorities in the importing country that the price at which the product under investigation is sold for consumption in the country of origin is less than the cost of production, sales at such prices may be considered as not having been made in the ordinary course of trade, provided that they have been made (1) over an extended period of time; (Footnote: The "extended period of time" may coincide with the investigation period, but should never be shorter than one year.) and (2) in substantial quantities; (Footnote: Where the producer under investigation made an overall profit on the like product sold for consumption in the country of origin, it will be assumed that sales below cost of production were not made in substantial quantities and normal value will be based on all domestic sales of the like product, including sales below cost of production.) and

Footnotes to Art. 2:4:
1. The situation where "there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country" shall be regarded to exist only when the total domestic sales (excluding below-the-cost sales which are conducted for an extended period of time in substantial quantities, at prices not capable of recovering costs within a reasonable period of time) is less than X percent of the value of the total export to the importing country concerned. In determining the domestic sales price, direct sales from the producer or exporter concerned to independent parties within the country shall be used as the basis for calculation. If the direct sales concerned do not reach the above-mentioned level, the resale from parties having associations or having a compensatory arrangement with the producer or exporter concerned to independent parties within the country shall be added to the direct sales concerned.
Ad Article 2

DETERMINATION OF SALES BELOW COST

When in the course of an investigation there are reasonable grounds to believe that sales in the domestic market of the exporting country are made below fully allocated costs, paragraph 4 of Article 2 of the Code permits the investigating authorities to exclude such sales in the determination of the normal value only when:

(a) they are made in substantial quantities over an extended period of time, and

(b) at prices that do not provide for recovery of all costs within a reasonable period of time.

With respect to (a), investigating authorities shall determine that sales below cost are made in substantial quantities over an extended period of time only when the weighted average selling price of all arms' length transactions is below fully allocated costs for the period under investigation, which should be at least six months and preferably one year. In the absence of such a determination, any
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<td>(3) at prices which do not permit recovery of variable costs (Footnote: variable costs shall be defined in accordance with generally accepted accounting principles in the country of exportation) within a reasonable period of time (Footnote: The &quot;reasonable period of time&quot; may coincide with the investigation period, but should never be shorter than one year. It must be a representative period. In this respect, the Signatories recognize that sales made during a start-up or expansion phase period or during an end-of-model-year period are not made in a representative period and should not normally form the basis for a finding of sales below cost of production.</td>
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2. For the purpose of this Article, parties shall be deemed to be associated to the exporters or producers only if: (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person. The term of "control" as used in this footnote means any of the following: (i) one of them owns 20 percent or more of outstanding voting stock or shares of the other, unless it is shown that this condition does not considerably affect the sales prices between them; or (ii) one of them owns 5 percent or more of outstanding voting stock or shares of the other, provided that it is recognized that this condition considerably affects the sales prices between them; or (iii) one of them sends officers or directors to the other, or both of them have as equivalent other relationship as this, provided that it is recognized that these conditions considerably affect the sales prices between them."

3. The constructed value of the end-
sales at a loss, including isolated sales at a loss, shall be included in the calculation of the normal value.

With respect to (b), investigating authorities shall determine that the prices do not provide for recovery of all costs within a reasonable period only when satisfied that there is a distinct pattern of sales below cost. Due regard should be given to, inter alia, trends in prices and levels of output in the domestic market of the exporting country and, where relevant, in world markets, the apparent duration of the sales below cost, the relationship of price to fixed and variable costs, and the magnitude of the price and output increase necessary to recover profitability.

In making a determination that the sales in the domestic market of the exporting country are not, by reason of price, in the ordinary course of trade, the investigating authorities shall be satisfied that the
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Product shall be established using the actual purchase price of the inputs. However, when the producer of the input and the manufacturer of the end-product are associated and the price is less than that which would prevail in the ordinary course of trade and does not cover the full cost of the input, the investigating authorities may base normal value calculations for the end-product on the lower of the constructed value of the input, or the prevailing market price in the ordinary course of trade.
allocation of costs for the like product under investigation are reasonable and in accordance with generally accepted accounting principles. Investigating authorities shall take into account independent evidence on the allocation of costs which is made available, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

Nothing in this Interpretative Note shall be construed as compelling investigating authorities to deem sales in the domestic market of the exporting country by reason of price, not to be in the ordinary course of trade for the purpose of establishing the normal value.
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5. When there are no sales of the like product in the ordinary course of trade to third countries, or when because of the particular market situation such sales do not permit a proper comparison, the margin of dumping shall be determined by a comparison with the actual cost of production of the investigated firm, plus an amount for administrative, selling and any other costs and for profits. That amount shall not exceed the actual costs and profit incurred or realized by the investigated firm for like products over the estimated lifetime or over the full business cycle of the product. If the administrative, selling and other costs or profits cannot be determined for like products, those costs and profits may be determined for the same general category of products, incurred or realized by the producer over the lifetime or the business cycle of that product category.
5. In cases where there is no export price or where it appears to the authorities (footnote: When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate, senior level.) concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

5. In cases where there is no export price or where it appears to the authorities (footnote: When in this Code the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate, senior level.) concerned that the export price is unreliable because of a relationship of ownership or control between the exporter and the importer, the export price may be constructed on the basis of the price at which the imported product is first resold to an independent buyer, or if the products are not resold to an independent buyer, on such reasonable basis as the authorities may determine. In constructing the export price based upon sales to an independent buyer, an adjustment shall be made for any change in value attributed to the product by further process of manufacture or assembly after importation, by deducting the value of any additional materials or labour to the extent necessary, but not more than the extent
Article 2.5 becomes Article 2.6.
necessary, to make the value of the product that is resold to an independent buyer equivalent to the value of the product imported.

Footnote to Art. 2:5:

1. Similarly, in constructing the domestic price of the product in the exporting country, or any substitutes for domestic price under Article 2:4, based upon sales to an independent buyer, an adjustment shall be made for any change in value attributed to the product by further process of manufacture or assembly, by deducting the value of any additional materials or labour to the extent necessary, but not more than the extent necessary, to make the value of the product that is resold to an independent buyer equivalent to the value of the product as sold to the related party.
| MODIFICATIONS PROPOSED BY USA | MODIFICATIONS PROPOSED BY EEC | MODIFICATIONS PROPOSED BY NORDIC COUNTRIES | MODIFICATIONS PROPOSED BY CANADA |
6. In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement, the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in paragraph 5 of Article 2 allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

6. To be included after “price comparability”:

In particular, (a) Due allowances shall be made if the investigative authorities determine that the price difference results, in whole or in part, from: (1) the fact that the individual order quantities of the exporter’s sales to one market are larger than the quantities of the exporter’s sales to the other market; (2) the fact that the aggregate volume of the product purchased by an individual customer in one market is larger than the aggregate volume of the product purchased by an individual customer in the other; or (iii) the fact that the total volume of the product sold in one market is larger than the total volume sold in the other, and that the difference in such volumes results in identifiable cost savings. (b) Where sales at different levels of trade are compared, due allowances shall

6. In order to effect a fair comparison between the export price and the domestic price in the exporting country (or the country of origin) or, if applicable, the price established pursuant to the provisions of Article VI:1(b) of the General Agreement, the two prices shall be compared at the same level of trade, as far as practicable, at ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in paragraph 5 of Article 2 allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made.

(Footnotes to Art. 2:6:
1. In order to make price comparison at the same level of trade, all the costs incurred
New Article 2.7. In order to effect a fair comparison between the normal value, as determined in accordance with paragraphs 4 or 5 above and the export price, both prices shall be calculated in a uniform and consistent manner (footnote: a uniform and consistent manner of calculation implies that when normal value is determined eg by calculating weighted or arithmetical averages, the export price shall also be determined by similar weighted or arithmetical average calculations. Established rebate and pricing policies of the investigated firm, even if not made public shall be taken into account when the firm presents evidence that it applies the same policies for sales on the domestic market and for exports.) The two prices shall be compared at the same level of trade,
Normal value and export price shall be established on a weighted average basis of all sales on the relevant markets for purposes of determining the dumping margin. be made if the investigative authorities determine that the price difference results, in whole or in part, from the differences in the levels of trade. The adjustment for differences in levels of trade may be determined from evidence that expenses incurred on sales at one level of trade would not have been incurred had the sales been made at the level of trade of the sales in the other market being compared. The fact that sales have not been made at both levels of trade in the same market shall not prevent an adjustment. The adjustment may be based, however, on evidence of the differences in prices between sales at both levels of trade in the home market or in any export market, if sales were made at both levels of trade in that market, or on evidence of the costs incurred by unrelated parties who purchase at one level of trade and resell at the other. Due allowances shall be made if the investigative authorities determine that the price because of the difference in the stage of trade (including all costs of related parties) shall be deducted in calculating of the normal value and export price, respectively. 2. Differences affecting price comparability include those in the following: (1) physical characteristics (2) import duties and indirect taxes (3) direct selling costs (4) indirect selling costs (5) general and administrative expenses (6) research and development costs (7) different volume of sales. In calculating the export price and the domestic sales price, methods for their calculation must not be differentiated in the following manner without justifiable reasons: (1) differentiation in the treatment of profits of related parties when calculating from their resale price; (2) calculation of the normal value by taking a weighted average of the domestic sales price or the export price to third
normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability. In the cases referred to in paragraph 5 of Article 2 allowance for costs, including duties and taxes, incurred between importation and resale, and for profits accrue.
difference results, in whole or in part, from differences in the selling expenses incurred on the sales under consideration. The adjustment shall reflect the differences in all selling expenses, and shall not be limited to the differences in direct selling expenses. All price comparisons shall be made net of any indirect taxes that are imposed directly upon the product when sold in one market, but which are rebated or not collected when the product is sold in the other market.

(Footnote: Actual costs shall be used for all price adjustments, allowances, cost or production data, and constructed value data. As a general rule, the cost and expense allocations recorded in a company’s books in accordance with generally accepted accounting principles in the country under investigation shall be used. Costs and adjustments reported by exporters using reasonable averaging and sampling techniques shall be accepted by administering countries, or by calculating the constructed value using an average cost, and comparing it to individual export prices. In calculating the export price in cases where there is association or a compensatory agreement between exporters and importers, anti-dumping duties shall not be interpreted as costs incurred between importation and resale, because allowance for the anti-dumping duty collected which has not been finally confirmed by investigation on the transaction concerned should not be made in the calculation of the dumping margin in review or refund procedures.

New Article 2.7. For the purpose of the comparison of prices, in converting a transaction value of a product expressed in terms of a currency in another country, the exchange rate at the date of a contract for export of the product in question shall be adopted as a general rule.
authorities.
Transaction - specific costs shall be avoided unless those costs are demonstrated to have had a significant effect on the price of the specific transaction.
Price comparisons shall generally be based on average prices in both markets over comparable time periods. Individual export price transactions shall not be compared with normal value based on average prices. Claims for adjustments and allowances shall not be disallowed solely because of the relationship of the parties to a transaction.)
New Article 2:8:
8. Normal value and export price, when not expressed in the same currency, shall be calculated according to the official exchange rate in the exporting country prevailing when the sales contract for exports to the importing country prevailing when the sales contract for exports to the exporting country was concluded or when a binding offer was made. When the investigated firm has secured the value of its claim through operations on the forward currency market or through currency options, the exchange rate it has obtained in such operations shall be used for comparing normal value and export price. Exporters should be given a reasonable period of time to adapt their prices to changes of exchange rates.
7. This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to the General Agreement.

(Romania has proposed an Agreement on Interpretation of the Implementation of the Second Supplementary Provision to paragraph 1 of Article VI in Annex I of the General Agreement, contained in MTN/GNG/W/61.)

New Article 2:8: Exporters are expected to revise domestic and export prices after an investigation to avoid dumping. Accordingly, the occurrence of price changes in any market after an investigation shall not be deemed fictitious, in the absence of other evidence.

New Article 2:9: Margins or any increase in margins caused by temporary exchange rate fluctuations shall be ignored. Margins or any increase in margins caused by sustained exchange rate fluctuations shall be ignored, unless an exporter fails to change prices within X days.
9. This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to the General Agreement.
Article 3 - Determination of Injury

1. A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and their effect on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

Footnote: The authorities concerned shall verify the accuracy of the information provided by the domestic industry in the complaint as well as in the course of the investigation.
1. A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and their effect on prices in the domestic market of the importing country for like products, (b) the injury suffered by domestic producers in the importing country of like products and (c) the causal relationship between the dumping and the injury.

It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Code.
2. With regard to volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

2. With regard to volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. Where it can be shown that price decreases or prevention of price increases were caused by factors other than the allegedly dumped imports and that the prices of the allegedly dumped imports were set to meet the decreased prices, protective measures should not be taken.

2. With regard to volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. An affirmative finding of material injury or threat of material injury shall not be made where dumped imports represent 2 percent or less, by value, of the total market for the like product in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

2. With regard to an increase in the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.
2. With regard to the volume of the dumped imports the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.  

(Delete last sentence)
No determination of injury shall be made, however, where it can be shown that dumped imports were priced to meet competitive market prices set by domestic or foreign producers which are not under investigation for dumping. In determining whether dumped imports are causing material injury, the relationship between the size of the dumping margin and the margins of underselling of like domestic products shall also be taken into account.
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3. The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.
3. The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments; and actual and potential negative effects on existing efforts of the domestic industry to develop and produce derivative or more advanced versions of the like product. The investigating authorities also may take into account the effects on the domestic industry of the likelihood of recurrent injurious dumping, as defined in paragraphs 4(i)-(iii) of Article 5. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3. With respect to subparagraph 3.1(b), the investigating authorities shall determine whether the dumped imports have resulted in the loss of sales for the domestic producer of the like product, and whether, as a result of the dumped imports, there has been a reduction of profits accruing, or reasonably expected to accrue, from the production of the like product. The examination of the impact on the industry concerned shall also include an evaluation of all other economic factors indicative of the impact of the dumped imports on the domestic producers of the like products such as actual and potential decline in output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment.
4. It must be demonstrated that the dumped imports are, through the effects (Footnote: As set forth in paragraphs 2 and 3 of this Article.) of dumping, causing injury within the meaning of this Code. There may be other factors (Footnote: Such factors include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.) which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.

4. It must be demonstrated that the dumped imports are, through the effects (Footnote: As set forth in paragraphs 2 and 3 of this Article.) of dumping, causing injury within the meaning of this Code. In this respect, the Signatories recognize that, where the increase in the prices of the imported products which would be adequate to remove the injury to the domestic industry is substantially higher than the margin of dumping, any injury cannot have been caused through the effects of dumping and, therefore, protective measures shall not be taken. There may be other factors (Footnote: Such factors include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade
4. It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Code. The demonstration of such causal link between the dumped imports and the injury should be based on positive evidence and not on mere assumption. In this respect, the elements to be taken into consideration should include, inter alia, the development of the relationship between the volume of the dumped imports and the sales and the market share of the domestic industry, and the relationship between the prices of the dumped imports and those of the domestic industry. However, there may be other factors which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports.

4. It must be demonstrated that the dumped imports are, through the effects (Footnote: As set forth in paragraphs 2 and 3 of this Article.) of dumping, causing injury within the meaning of this Code. Also when the margin of dumping or the volume of dumped imports, actual or potential, in relation to total demand for like products in the importing country is more than negligible, as defined in footnote to Article 5:3, the investigating authority should endeavor to examine individually the injurious effect of dumped imports from each source, in relation to dumped imports from other sources. There may be other factors (Footnote: Such factors include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, market segmentation, industry rationalization and restructuring, the nature and extent of competition in the domestic market among domestic producers in the industry as a whole and between the foreign and domestic producers, changes or developments in technology, the export performance and productivity of the domestic industry.), including conditions of competition prevailing in the domestic market as a whole, which at the same time affect the state of the domestic industry and injuries caused by these other factors shall not be attributed to the dumping.

4. With respect to subparagraph 3:1(c), investigating authorities shall consider whether there are factors other than dumping (footnote: Such factors include, inter alia, the volume and prices of imports not sold at dumping prices regardless of their origin including from an exporting country subject to the investigation, contraction in demand or changes in the patterns of consumption, market segmentation, industry rationalization and restructuring, the nature and extent of competition in the domestic market among domestic producers in the industry as a whole and between the foreign and domestic producers, changes or developments in technology, the export performance and productivity of the domestic industry.), including conditions of competition prevailing in the domestic market as a whole, which at the same time affect the state of the domestic industry and injuries caused by these other factors shall not be attributed to the dumping.
restrictive practices of
and competition
between the foreign and
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export performance and
productivity of the
domestic industry.)
which at the same time
are injuring the
industry, and the
injuries caused by
other factors must not
be attributed to the
dumped imports.

5. The effect of the
dumped imports shall be
assessed in relation to
the domestic production
of the like product when
available data permit
the separate
identification of
production in terms of
such criteria as: the
production process, the
producers' realizations,
profits. When the
domestic production of
the like product has no
separate identity in
these terms the effects
of the dumped imports
shall be assessed by the
examination of the
production of the
narrowest group or
range of products,
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which includes the like product, for which the necessary information can be provided. The effect of the dumped imports on the public interest shall be assessed in terms of such criteria as the production, competitiveness, and profitability of firms purchasing the imports; the interests of consumers; and the degree of competition or concentration in the domestic industry producing the like product.
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6. A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. (Footnote: One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices.)

New Article 3:6: 6. It must be determined whether the dumped imports from each source are causing material injury. That, taken together, dumped imports from a number of sources may cause material injury shall have no bearing on the assessment of the effect of dumped imports from an individual source.
6. A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. The examination of threat of material injury shall include an evaluation of all relevant economic factors and indices, including, inter alia: a significant rate of increase of dumped imports into the domestic market; freely disposable (including underutilized) capacity in the exporting country; exports at prices that will have a suppressing or depressing effect on domestic prices; inventories in the importing country of the product being investigated; the likelihood of increased imports due to product shifting; any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury:

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Article 3:6 should be amended by the adoption in the Code of the full text of Recommendation ADP/25 of 21/10/85 of the Committee on Anti-Dumping Practices concerning determination of threat of material injury. In addition, the list of factors mentioned under paragraph 9 of this Recommendation should be completed by the following:

- concrete plans to increase capacity already in excess of domestic demand, or its utilization, indicating the likelihood of substantially increased dumped exports;
- development of sales on third markets, e.g. risk of diversion of exports;
- build up of related selling organizations of the exporter in the importing country;
- market proximity of the exporting country; role as traditional supplier.

(Footnote 6 to Art. 3:6 should be deleted.)

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6. A determination of threat of injury shall be based on facts and commercial realities and not merely on allegation, conjecture or remote possibility. Dumping must have taken place and the predicted future injury must be clearly foreseen and imminent. The investigating authorities shall consider all relevant economic factors so as to provide convincing reasons to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices. These factors shall include whether there has been a significant rate of increase of dumped imports, whether the imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, whether there has been significant increase in the production capacity of the exporting country, and whether there are significant excess inventories.
New Article 3:8:
8. In making determinations concerning the existence of actual material injury to the domestic industry producing the like product, the investigating authorities may cumulatively assess the volume and effect of imports from two or more countries subject to investigation if such imports compete, in the market for the like product in the investigating country, with each other and with the like products produced by the domestic industry. However, imports from a country whose imports constitute 2 percent or
and actual and potential negative effects on existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product. (Footnote: Two examples, although not exclusive ones, are that: (a) there is convincing reason to believe that there will be, in the immediate future, substantially increased importations of the product at dumped prices; or (b) there is a likelihood of recurrent injurious dumping as defined in paragraphs 4(i) - (iii) of Article 5.)
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less of the total market
for the like product in
the investigating
country may not be
cumulatively
considered with
imports from other
countries under invest-
igation. Imports
already subject to anti-
dumping duties or
countervailing duties,
or subject only to a
countervailing duty
investigation, may not
be considered cumula-
tively with the imports
under investigation.

7. No comments.
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Article 4 - Definition of Industry

1. In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that (i) when producers are related (Footnote: An understanding among Parties should be developed defining the word "related" as used in this Code.) to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers; (ii) in exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if...
Article 4 - Definition of Industry

1. In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that (i) when producers are related (Footnote: An understanding among Parties should be developed defining the word "related" as used in this Code.) to the exporters or importers or are themselves importers of the allegedly dumped product, the industry may be interpreted as referring to the rest of the producers; (ii) in exceptional circumstances the territory of a Party may, for the production in question, be divided into two or more competitive regions and the producers within each region may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market
(a) the producers within such market sell all or almost all of their production of the product in question in that market, and

(b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

2.-4. No comments.
is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market. (iii) When, in an investigation involving a processed agricultural product, the processed agricultural product is produced from the raw agricultural product through a single continuous line of production, and there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, the growers of the raw agricultural product may be considered producers of the processed product and part of the industry producing the processed product.

Injury, to the domestic industry in that region, and (c) the industry located in the region concerned represents a significant proportion of the total production of the product concerned in the importing country. In such circumstances, injury may be found to exist even where a major proportion of the total domestic industry is not injured.

be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.
Article 5 - Initiation and Subsequent Investigation

1. An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry (footnote: As defined in Article 4.) affected. The request shall include sufficient evidence of (a) dumping; (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Code and (c) a causal link between the dumped imports and the alleged injury. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above.
Article 5 - Initiation and Subsequent Investigation

1. An investigation to determine the existence, degree and effect of any alleged dumping shall normally be initiated upon a written request by or on behalf of the industry (footnote: As defined in Article 4.) affected. The request shall include sufficient evidence of (a) dumping; (b) injury within the meaning of Article VI of the General Agreement as interpreted by this Code and (c) a causal link between the dumped imports and the alleged injury. Where there is a likelihood of recurrent injurious dumping, or repeat corporate dumping, the request shall additionally include sufficient evidence that one of the situations described in paragraph 4 of Article 5, or paragraph 1(iv) of Article 11 exists. If in special circumstances the authorities concerned decide to

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<td>investigation without having received such a request, they shall proceed only if they have the same evidence to establish a prima facie case on all points under (a) to (c) above. It is the obligation of the authorities concerned to satisfy themselves that the above conditions are fulfilled when a request is made on behalf of the industry. (Footnote to Art. 5:1: Exceptional circumstances shall not be deemed to exist when the authorities accept a standing complaint and monitor imports with a view to self-initiating an investigation when preliminary evidence of dumping is found.)</td>
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<td>The authorities concerned shall, upon request, provide exporter or producer concerned with the reasoning as to the sufficiency of the evidence.</td>
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initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points above.

appropriate, the prices of third country sales or constructed value in the country of origin, and either the actual export prices or the prices at which the exported goods are resold in the importing country. - Injury: Volume and prices of the allegedly dumped imports and their effect on the industry affected, as demonstrated by developments in production, capacity utilization, stocks, consumption, market shares, prices, profits or losses, and employment. - Causality: Justification that the material injury is due to dumping and not to other factors. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) to (c) above, including in particular that referred to in the second, third and fourth indents of this paragraph.

delete to initiate an investigation without having received such a request, they shall proceed only if they have the same evidence to establish a prima facie case on all points under (a) to (c) above. It is the obligation of the authorities concerned to satisfy themselves that the above conditions are fulfilled when a request is made on behalf of the industry. (Footnote to Art. 5:1: Exceptional circumstances shall not be deemed to exist when the authorities accept a standing complaint and monitor imports with a view to self-initiating an investigation when preliminary evidence of dumping is found.)

Simple assertion unsubstantiated by relevant evidence cannot be considered sufficient to meet the requirements of this paragraph.

Ad Article 5:1

Before an investigation can be initiated, the investigating authorities shall satisfy themselves that the evidence available is sufficient to conclude that a prima facie case in respect of dumping, injury and a causal link exists. A request for an investigation made by or on behalf of the domestic industry should provide the following information: information on the domestic industry identification of the complainants: list of all other known domestic producers, or where impracticable a list of other known association of producers: a complete description of the goods in respect of which the investigation is requested, a description of marketing and distribution methods as
well as the volume and value of the complainant's production for the relevant period.
Information on the imported product:
- a complete description of the allegedly dumped goods:
- a list of known foreign producers, exporters and importers:
- information on the timing, volume and value of known shipments:
Evidence of dumping:
- provide the necessary data to permit the estimation of the selling price in the exporter's domestic market or the exporter's costs of production:
information on the prices at which the goods are sold to the importers or resold in the importing country.
Evidence of injury:
- evidence of either price suppression or loss of sales, and reduced profits:
- other evidence which demonstrates the existence of injury.
Evidence of a causal link:
- evidence that the injury is due to the dumping:
New Article 5:2:
2. As soon as the authorities concerned receive a request for initiation of an investigation they shall publish a notice of receipt of such a request indicating the product and the producers concerned, a summary of the allegations in the request and a period for comments. Upon request of any interested party, they shall without delay make available the complete non-confidential version of the complaint. The period for comments shall in no case be less than (a) days or more than (b) days.

2. No comments.
New Article 5:2

2. An anti-dumping investigation should not be initiated before the actual importation of the allegedly dumped product. However, in exceptional circumstances, e.g., in the purchase of large capital equipment which occurs at infrequent intervals an anti-dumping investigation may be initiated when the sales contract has been concluded.

Article 5:2 becomes Article 5:3.
3. An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible.

Footnote to Art. 5:3:
1. The criterion of "negligible" is fulfilled if the margin of dumping or injury is not more than 5 percent, if the total volume of dumped imports under investigation from a particular country do not constitute more than 5 percent of total domestic consumption in the importing country of like products. For an individual company subject to investigation, the criterion of "negligible" should normally be fulfilled if the total volume of dumped imports from the company does not constitute more than 2 percent of the total domestic consumption in the importing country of the like product.
3. An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the injury is negligible. The authorities concerned shall publish notice of the rejection of any written request to initiate an investigation.

4. An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There should be immediate termination in cases where the margin of dumping or the volume of dumped imports, actual or potential, or the injury is negligible. (Footnote: The criterion of "negligible" is fulfilled if the margin of dumping or injury is not more than 5 percent if the total volume of
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<td>dumped imports under investigation from a particular country do not constitute more than 5 percent of total domestic consumption in the importing country of like products. For an individual company subject to investigation, the criterion of &quot;negligible&quot; is fulfilled if either the margin of dumping or the margin of injury is not more than 2 percent of the total domestic consumption in the importing country of the like product.</td>
<td>small relative magnitude that the dumped imports make no contribution to the injury to the domestic industry, or pose no threat of injury, or when the injury attributable to the dumped imports is negligible. (Footnote: Factors to consider include, inter alia, the magnitude and recent trends in the volume and prices of dumped imports from that particular country, the market share and share of imports accounted for by the dumped imports from that particular country, and whether that particular country has freely disposable capacity to substantially increase its dumped exports to the importing country's market.</td>
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New Article 5:4
A. No anti-dumping proceeding shall be initiated with respect to a product which is already subject to a quantitative restriction under GATT Article XIX or the Arrangement Regarding International Trade in Textiles or any future arrangement for the integration of the textiles and clothing sector into the GATT.

B. No anti-dumping proceeding shall be initiated in respect of any country through which the product named in a request for investigation is merely trans-shipped.
New Article 5:4:
4. A likelihood of recurrent injurious dumping may be found where, subsequent to the issuance of a dumping finding, the investigating authorities determine:
   (i) a producer of a product subject to a dumping finding exports parts or components to the importing country for assembly or completion by a related party into a product covered by the dumping finding, and the value of the parts or components imported from the country subject to the dumping finding is less than [X] percent of the total value of the assembled or finished product;
   (ii) a producer subject to a dumping finding exports parts or components to a third country for assembly or completion by a related party into a product covered by the dumping finding, which is then exported to the
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importing country, and the value of the parts or components imported from the country subject to the dumping finding is less than \( X \) percent of the total value of the assembled or finished product;

(iii) a third country producer related to a producer subject to a dumping finding exports to the importing country the product subject to the dumping finding;

(iv) within a single exporting country, a producer exports merchandise that incorporates as a major input a product that is covered by a dumping finding in excess of \( Y \) percent, and the producer is also related to or is the producer of the input product; or:
4. No comments.
(v) a third country producer related to a producer of a product that is covered by a dumping finding in excess of \([Y]\) percent exports merchandise that incorporates that product as a major input.

For purposes of this paragraph, a relationship between persons may be deemed to exist if one person owns or controls, either directly or indirectly, the other person, or if both persons are subject to common ownership or control.

Recurrent injurious dumping exists when there has been a dumping finding after an investigation in the situations described in paragraphs (i)-(v) above.

Article 5:4 becomes
Article 5:5
5. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

New Article 5:6:
6. Each party shall establish procedures for the issuance of rulings concerning specifically described situations arising under its anti-dumping laws, regulations, and administrative procedures. Rulings with confidential information deleted shall be maintained and made available to the public for inspection.
5. Investigations shall, except in special circumstances, be concluded within one year after their initiation. It is further recognized that where there is a likelihood of recurrent injurious dumping, as defined in paragraph 4 of Article 5, or repeat corporate dumping, as defined in paragraph 1 (iv) of Article 11, investigating authorities may conclude an investigation in considerably less time than one year.

Article 5:5 becomes Article 5:6.
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<td>1. The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect of the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.</td>
<td>1. The foreign suppliers and all other interested parties shall be given ample opportunity to present in writing all evidence that they consider useful in respect of the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally. Any request for information by the authorities concerned shall be restricted to information essential to the investigation. When drawing up such request and when analyzing the evidence received in response to such a request, the authorities concerned shall take special account of the difficulties which may be experienced by small producers in providing the evidence requested. Footnote to Art. 6:1: As an illustration &quot;interested party&quot; should include: (a) a manufacturer, producer exporter, or importer, of the product which is the subject of an investigation; (b) the government of a country in which such a product is produced or exported.</td>
<td>1. The authorities concerned shall investigate all the exporters alleged to be dumping. In a case where the number of the exporters concerned makes the investigation of all the exporters impracticable, the authorities concerned shall investigate exporters whose exportations are representative of the exportations from the country in question. The authorities concerned should investigate unspecified companies, if they so request.</td>
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1. Interested parties shall be given ample opportunity to present in writing all information and argument that they consider relevant in respect of the anti-dumping investigation in question. Taking account of the need to protect confidential information, written information and argument submitted by one interested party shall be made available promptly to other interested parties participating in the investigation. Interested parties also shall have the right, upon justification, to present information orally. Where such information is presented orally, the interested parties subsequently shall be required to reduce such submissions to writing. Investigating authorities shall prepare or cause to be prepared a summary of all other oral submissions. Taking into account the need to protect confidential information, the authorities concerned shall make those summaries available to
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the government of a country directly affected by the investigation: (c) a manufacturer, producer, user industry or wholesaler in the importing country of a like product; (d) a trade or business association the majority of whose members manufacture, produce, use, import/export or wholesale a like product in either the exporting or the importing country; (e) national or territorial consumers organizations provided they represent the majority of the consumers' interests for the products affected; (f) an association, the majority of whose members are composed of interested parties described in sub-paragraph (c)(d), and/or (e).
interested parties participating in the investigation. Interested parties shall include:

(i) a foreign manufacturer, producer, or exporter, or the importer of merchandise which is the subject of an investigation, or a trade or business association a majority of the members of which are exporters or importers of such merchandise;

(ii) the government of the country in which such merchandise is produced or manufactured;

(iii) a manufacturer, producer, or wholesaler in the importing country of a like product;

(iv) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture.
production, or wholesale in the importing country of a like product:
(v) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the importing country;
(vi) an association, a majority of whose members is composed of interested parties described in clauses (iii), (iv), or (v) with respect to a like product; and
(vii) in an investigation involving an industry engaged in producing a processed agricultural product, a coalition or trade association which is representative of either processors, or processors and growers.

2. The authorities concerned shall whenever practicable provide timely opportunities for interested parties known to be concerned to see all information that is

To be inserted between Art. 6:1 and 6:2:
When an exceptional number of interested parties or types of products are involved in an anti-dumping investigation, the authorities may, by the use of sampling techniques, limit the investigations to a manageable number of parties or products, provided that these are representative. In such cases samples will be established preferably with the consent of the parties concerned. Where this does not prove possible, the rights of companies to receive individual treatment after the imposition of anti-dumping duties shall be safeguarded.
authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

causality are based. As an example, the investigating authorities should indicate why pricing decisions are found not to be in accordance with customary business practice and commercial considerations and why such pricing decisions are considered to be an unfair trade practice, to be condemned under Article VI of GATT.

3. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation...
relevant to the presentation of their cases, that is not confidential as defined in paragraph 3 below, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

3. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an anti-dumping investigation
shall, upon cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it. (Footnote: Parties are aware that in the territory of certain Parties disclosure pursuant to a narrowly drawn protective order may be required.) Parties providing confidential information may be requested to furnish non-confidential summaries thereof. In the event that such parties indicate that such information is not susceptible of summary, a statement of the reasons why summarization is not possible must be provided.
shall, upon *good* cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it. (Footnote: Parties are aware, and recognize as desirable, that in the territory of certain Parties disclosure pursuant to a narrowly drawn protective order may be required.) Investigating authorities shall either require persons providing confidential information to furnish non-confidential summaries thereof or shall prepare such summaries. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In the event that such parties indicate that such information is not susceptible of summary, a statement of the reasons why summarization is not possible must be provided.
4. However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to the satisfaction from appropriate sources that the information is correct. (Footnote: Parties agree that requests for confidentiality should not be arbitrarily rejected.)

5. In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation.
4. However, if the authorities concerned find that a request for confidentiality is not warranted and if the supplier of the information is unwilling to make the information public, the authorities shall disregard such information. (Footnote: Parties agree that requests for confidentiality should not be arbitrarily rejected.)

5. In order to verify information provided or to obtain further details the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation. The authorities shall make the reports of any verifications available to the firms to which they pertain, and may, taking account of the need to protect confidential information, make such reports available to the complainants.
6. When the competent authorities are satisfied that there is sufficient evidence to justify initiating an anti-dumping investigation pursuant to Article 5, the Party or Parties the products of which are subject to such investigation and the exporters and importers known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given.
6. When the competent authorities are satisfied that there is sufficient evidence to justify initiating an anti-dumping investigation pursuant to Article 5, the Party or Parties the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.
7. Throughout the anti-dumping investigation all parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all directly interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.
2. The authorities concerned shall provide opportunities for the complainant and the importers and exporters known to be concerned and the governments of the exporting countries, to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 3 below, and that is used by the New Article 6.2.

Importers and exporters known to be concerned and the governments of the exporting countries are entitled to be informed of the essential facts and the economic rationale upon which any proposed provisional or definitive determinations of dumping, injury and
7. Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities concerned shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. A transcript of any such meeting shall be prepared by the authorities and made available to the public. Provision of such opportunities and the availability of the transcript must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting and failure to do so shall not be prejudicial to that party's case.

Authorities shall, before drawing final conclusions from the results of an investigation, inform all interested parties of the essential facts and considerations on the basis of which it is intended to impose definitive measures. Such disclosure should be made in sufficient time for the parties to defend their interests.
8. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final findings (footnote: Because of different terms used under different systems in various countries the term "finding" is hereinafter used to mean a formal decision or determination.) affirmative or negative, may be made on the basis of the facts available. With respect to the use of facts available, the provisions of the Annex Concerning the Use of Facts Available in Terms of Article 6:8 shall apply.
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Article 7 - Price Undertakings

1. Proceedings may (Footnote: The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 3) be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping.

Price increases under such undertakings shall not be higher than necessary to remove the injury to the domestic industry or the margin of dumping, whichever is the less.
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Proceedings may be suspended (footnote: The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 3.) or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease dumping so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. Undertakings other than price undertakings shall not be accepted.
2. Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country have initiated an investigation in accordance with the provisions of Article 5 of the Code. Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons.

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2. Price undertakings shall be accepted unless the authorities determine that the undertaking offered cannot be effectively monitored. If the authorities determine that an undertaking cannot be effectively monitored, they shall provide interested parties notice of that determination and an explanation of the reasons for the determination, an opportunity to comment, before the determination is made final.
2. Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing country have initiated an investigation in accordance with the provisions of Article 5 of the Code. Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons. The acceptance of undertakings should not be subject to unnecessarily restrictive conditions; in particular there should be no requirement that undertakings must be offered prior to a preliminary determination of dumping and injury.
3. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse except in cases where a determination of no threat of injury is due in large part to the existence of a price undertaking. In such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Code.

3. - 5. No comments.
3. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse except in cases where a determination of no threat of injury is due in large part to the existence of a price undertaking. In such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Code. In the event a determination of injury or threat thereof is made, the undertakings shall continue consistent with the provisions of this Code.
6. Undertakings shall not remain in force any longer than anti-dumping duties could remain in force under this Code. The authorities of an importing country shall review the need for the continuation of any price undertaking, where warranted, on their own initiative or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.
6. Undertakings shall not remain in force any longer than anti-dumping duties could remain in force under this Code. The authorities of an importing country shall review the need for the continuation of any price undertaking, where warranted, on their own initiative or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review. In assessing the need for the continuation of any price undertaking, the authorities may take into account the likelihood of recurrent injurious dumping, as defined in paragraph 4 of Article 5, or repeat corporate dumping, as defined in paragraph 1(iv) of Article 11.
7. Whenever an anti-dumping investigation is suspended or terminated pursuant to the provisions of paragraph 1 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic conclusions and a summary of the reasons therefor.
7. Whenever an anti-dumping investigation is suspended or terminated pursuant to the provisions of paragraph 1 above and whenever an undertaking is terminated, this fact shall be officially notified and must be published. Such notices shall set forth at least the basic conclusions and a summary of the reasons therefor, and whenever an investigation is suspended or terminated, a copy of the undertaking.
Article 8 - Imposition and Collection of Anti-dumping Duties

1. The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement, and that the duty be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

MODIFICATIONS PROPOSED BY HONG KONG

1. The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled is a decision to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement. In order to minimize impediment to international trade the anti-dumping duty shall be less than the full margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry.

MODIFICATIONS PROPOSED BY REPUBLIC OF KOREA

1. The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. It is desirable that the imposition be permissive in all countries or customs territories Parties to this Agreement. The duty shall be less than the margin, if such lesser duty would be adequate to remove the injury to the domestic industry.

MODIFICATIONS PROPOSED BY JAPAN

Footnote to Art. 8:1:
1. Before imposing anti-dumping duties, the authorities shall take into account its impact on the entire national economy.
Article 8 - Imposition and Collection of Anti-dumping Duties

1. The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing country or customs territory. The imposition should be permissive in all countries or customs territories Parties to this Agreement, and the anti-dumping duty should be less than the dumping margin, if such lesser duty would be adequate to remove the injury to the domestic industry.
A lesser duty would be adequate to remove the injury if it precluded price undercutting, price depression or price suppression as referred to in paragraph 2 of Article 3. If the authorities in the importing country decide to establish basic prices for the complaining producers for purposes of the comparison, such basic prices should be reasonable and not comprise excessive profit margins.
2. When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a nondiscriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings under the terms of this Code have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and its impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved. In order to prevent the circumvention of anti-

New Article 8:2:
In deciding on the initiation of an anti-dumping investigation, on whether or not to apply provisional or definitive anti-dumping measures and on the extent and level of such measures the investigating authority should consider whether an investigation or anti-dumping measures would be in the public interest. (Footnote: Consideration of the public interest should cover such questions as the competitive situation, the interests of consumers and industrial users of the product subject to the complaint and other relevant economic circumstances.)

Article 8:2 becomes Article 8:3.
2. When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a nondiscriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources, from which price undertakings

Footnote to Art.8:2:
1. If any definitive anti-dumping duty should be levied on the product supplied by companies left out of the investigations conducted in accordance with the footnote to Article 6:1, the amount of the anti-dumping duty shall not exceed that of weighted average of dumping margins confirmed through the actual investigations.

Footnote: Where two or more countries have reached under the provisions of Article XXIV:8(a) of the general Agreement such a level of integration that they have the characteristics of a single, unified market, the entire area of integration may be regarded as a country in the interpretation of this Code.
dumping duties, the authorities may impose duties where, subsequent to the issuance of a dumping finding: (i) parts or components are shipped from the country covered by the dumping finding to the importing country for assembly or completion into a product covered by the dumping finding, and the value of the parts or components imported from the country subject to the dumping finding is equal to or exceeds \( X \) percent of the total value of the assembled or finished product; (ii) parts or components are shipped from the country covered by the dumping finding to a third country for assembly or completion into the product covered by the dumping finding, which is then exported to the importing country, and the value of parts or components imported from the country subject to the dumping finding is equal to or exceeds \( X \) percent of the total value of the assembled or finished product; or
under the terms of this Code have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved. It is recognized that anti-dumping investigations are company specific and that anti-dumping duties are a levy on dumped products and not on products emanating from the same supplying country. Further, companies which did not export during an investigation period...
(iii) producers in a supplier country that is covered by the dumping finding begin exporting to the importing country altered or later developed merchandise.

Footnote: Before taking action to impose duties in circumstances involving altered or later-developed merchandise, investigating authorities shall first satisfy themselves that such merchandise is merely an altered or later-developed version of the same merchandise originally described as subject to anti-dumping duties. In making such a determination, the investigating authorities shall consider inter alia, (1) whether the altered or later-developed merchandise has the same general physical characteristics as the originally described merchandise; (2) whether the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the originally described merchandise; (3) whether the uses of the altered or later-developed merchandise
cannot have been dumping. No anti-dumping duties shall be imposed on such companies unless these are subsequently investigated and dumping is found. The investigating authorities shall take into account the special situation of small companies which are unable to participate fully in the investigation due to lack of resources. Such companies shall provide, to the best possible extent, any available information required by the investigating authorities.
and the originally described merchandise are the same; (4)
whether the altered or later-developed merchandise is sold through the same channels of trade as the originally described merchandise; (5)
whether the altered or later-developed merchandise is advertised and displayed in a manner similar to the originally described merchandise; and (6) whether the altered or later-developed merchandise permits the purchaser to perform any functions additional to those performed with the originally described merchandise. In evaluating this last criterion, investigating authorities should not presume that the mere addition of any functions gives rise to merchandise that is not subject to the dumping finding, unless such additional functions constitute the primary use of the altered or later developed merchandise and the cost of the additional functions constitutes more than a significant proportion of the total cost of production of such merchandise.
3. The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible.

3. The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, the amount in excess of the margin shall be reimbursed as quickly as possible and within (c) months from the date of application for a refund.

3. The amount of the anti-dumping duty must not exceed the margin of dumping as established under Article 2. Therefore, if subsequent to the application of the anti-dumping duty it is found that the duty so collected exceeds the actual dumping margin, calculated without regard to the payment of any anti-dumping duties, the amount in excess of the margin shall be reimbursed as quickly as possible, with reasonable interest.

Footnote to Art.8:3:
1. Refund procedures shall not be excessively burdensome to interested importers or exporters.
In no case may a determination to impose duties on imports of altered or later-developed merchandise be inconsistent with the like product determination that was made in the original investigation in conformity with Article 2.2 of this Agreement.

The authorities shall not impose duties under paragraphs 2(i) - (iii) if to do so would be inconsistent with the prior determination of injury.

Article 8:3 becomes Article 8:4.

3. Investigating authorities shall establish individual normal values for the products exported by each of the known suppliers. (Footnote: Investigating authorities may apply a residual margin of dumping for suppliers non-identified at the initiation stage. The residual margin of dumping shall be based on the weighted average margin of dumping found on suppliers of the same country. Investigating authorities shall, upon request of any non-identified or new supplier, undertake without undue delay to establish an individual
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without undue delay to establish an individual normal value for that supplier. Such individual normal values shall be provided to the exporters to whom they relate at the time of or in advance of importation in order for the exporter to be in a position to determine the amount of anti-dumping duty which will be payable on the product. (Footnote: Where, in exceptional circumstances, the investigating authorities have determined normal values for an exporting country on the basis of a representative sample, investigating authorities shall, upon request from an individual supplier, undertake without undue delay to establish an individual normal value for that supplier subsequent to the taking of any final measures.) No anti-dumping duty shall be collected when the export price equals or exceeds the normal value, as established under Article 2. If subsequent to the application of the anti-dumping duty it is found that the duty so collected is greater than the amount found that the duty so collected is greater than the amount by
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4. No comments.

5. Public notice shall be given of any preliminary or final finding whether affirmative or negative and of revocation of a finding. In the case of affirmative finding each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities, and the reasons and basis therefor. In the case of a negative finding, each notice shall set forth at least the basic conclusions and a summary of the reasons therefor. All notices of finding shall be forwarded to the Party or Parties the products of which are subject to such finding and to the exporters known to have an interest therein.

Footnote to Art.8:5:
1. In the case of affirmative findings, each such notice shall set forth the factors examined and reasons for the determination including information concerning factors other than dumping as was examined in the determinations of injury.
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<td>Article 8:4 becomes Article 8:5</td>
<td>Article 8:5 becomes Article 8:6</td>
<td>which the normal value exceeds the export price, the excess amount shall promptly be reimbursed without undue delay.</td>
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5. Public notice shall be given of any preliminary or final finding, whether affirmative or negative, and of a revocation of a finding. Each such notice shall set forth the facts and conclusions of law upon which the finding or revocation is based in sufficient detail so that the path of reasoning of the decision maker is clear. All notices of findings shall be forwarded to the Party or Parties the products of which are subject to such finding and to other interested parties known to have an interest therein. In addition, in the case of a preliminary or final determination of dumping, the authority concerned will provide to interested parties

- Where a determination has
New Article 8.6:
6. The amount of anti-dumping duty liability for each import shall be determined in an expeditious manner, and in no case later than three years after importation. No anti-dumping duties may be collected if the duty to be paid has been determined after the expiration of this three-year period.
which request disclosure a further explanation of the calculation methodology used in making the determination. Such disclosure shall take into account the need to protect confidential information.

been made that sales in the domestic market of the exporting country were not, including by reason of price, in the ordinary course of trade for the purpose of establishing normal value under Article 2:4. the authorities shall provide detailed reasons for such a determination.
Article 9 - Duration of Anti-Dumping Duties

1. An anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury.
Article 9 - Duration of Anti-Dumping Duties

1. An anti-dumping duty shall remain in force only as long as, and to the extent necessary to counteract dumping which is causing injury. The duty shall lapse after 3 years from the date on which it entered into force or was last modified or confirmed.
2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review. The review shall be completed as quickly as possible and within (d) months from the date of application for a review.

New Article 9:2:
2. An anti-dumping duty shall be terminated after five years from the date of the imposition of the duty, except where the authorities concerned receive, six months prior to the termination of the duty, evidence in writing by or on behalf of the domestic industry to show that dumped import still exists and the termination of the duty would cause or threaten material injury to the domestic industry. The authorities concerned shall, upon receipt of such evidence, review the situation in order to decide whether or not dumping still exists and whether or not the termination of anti-dumping duty could cause or threaten material injury to the domestic industry. The authorities concerned may specify the period for the extension of the duty up to three years, if the authorities concerned recognize the necessity for the extension of the duty.
2. The investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review. In assessing the need for the continued imposition of the duty, the authorities may take into account the existence of recurrent injurious dumping, as defined in paragraph 4 of Article 5, or repeat corporate dumping, as defined in paragraph 1 (iv) of Article 11.

Whenever the authorities initiate or complete a review, the authorities shall publish notice thereof, and publish the findings of the review consistent with the requirements of Article 8.5. The provisions of Article 6 shall apply to a review.
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<td>New Article 9:3:</td>
<td>3. A request for a review may normally be submitted by an interested party no sooner than one year after public notice is given of the finding by the investigative authorities that all requirements for the imposition of anti-dumping duties have been fulfilled, and at one year intervals thereafter. The authorities shall conduct such a review if evidence is submitted that the weighted average margin of dumping will differ from the margin of dumping found in the most recent investigation or review by more than 10 percent of the margin of dumping, or that there would be no material injury or threat of material injury to the domestic industry producing the like product if the anti-dumping duties were to be removed.</td>
<td>New Article 9:3 (former Article 9:2): 3. Notwithstanding the provisions of the Article 9:2, the investigating authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.</td>
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New Article 9:3:
3. Anti-dumping duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed.

The investigating authorities shall, within the six months prior to the end of the five year period, publish a notice of the impending expiry of the measure in question and inform the domestic industry known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard.

New Article 9:3:
3. Subsequent to a determination by the investigating authorities that certain sales in the domestic market of the exporting country were not, by reason of price, in the ordinary course of trade for the purpose of establishing the normal value under Paragraph 4 of Article 2, the exporter may request a review of the normal value whenever it provides sufficient evidence that circumstances have materially changed. Investigating authorities shall without undue delay undertake a review of the normal value in response to any such substantiated request.
| ANTI-DUMPING CODE | MODIFICATIONS PROPOSED BY HONG KONG | MODIFICATIONS PROPOSED BY REPUBLIC OF KOREA | MODIFICATIONS PROPOSED BY JAPAN |
Notwithstanding a decision subsequent to a review under paragraph 9:2 to continue the anti-dumping duty, it shall be terminated after a maximum of five years from the date it was initially imposed unless the authorities concerned receive a written request for an extension of the imposition of the anti-dumping duty from domestic producers of the like good. Such a request shall set forth the facts and grounds for an extension of the anti-dumping duty. If on the basis of such a
New Article 9:4:
4. The authorities shall respond to any request for a review within three months of the date the request for the review was filed, and such response shall state the authorities' decision to conduct or not to conduct the review, as the case may be. If the authorities decide not to conduct a review, such response shall also state the reasons for denying the requested review. If the authorities decide to conduct a review, they shall complete the review within twelve months of the date on which the authorities announced their decision to conduct the review.
Where an interested party shows that the expiry of the measure would lead again to injury or threat of injury, the investigating authorities shall publish a notice of their intention to carry out a review of the measure. Such notice shall be published prior to the end of the relevant five-year period. The measure shall remain in force pending the outcome of the review. Where anti-dumping duties and undertakings lapse the investigating authorities shall publish a notice to that effect. Such notice shall state the date of the expiry of the measure.

If, on the basis of evidence presented, the authority concludes that injury or threat thereof continues to exist, it may extend the application of the duty for a period not exceeding three years, whereafter the anti-dumping duty shall be terminated.
1. Provisional measures may be taken only after a preliminary affirmative finding has been made that there is dumping and that there is sufficient evidence of injury, as provided for in (a) to (c) of paragraph 1 of Article 5. Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

2. No comments.
Article 10 - Provisional Measures

1. Provisional measures may be taken only after a preliminary affirmative finding has been made that there is dumping and that there is sufficient evidence of injury, as provided for in (a) to (c) of paragraph 1 of Article 5. Provisional measures shall not be applied unless:

- a proceeding has been formally initiated and a notice published to that effect;
- the parties concerned have been given an adequate opportunity to comment within this proceeding;
- there has been at least a preliminary investigation of the facts, resulting in a preliminary affirmative finding of dumping and injury; and
- the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

In order to allow for an adequate period for presentation, review and validation of evidence, provisional measures shall not be imposed sooner than 60 days following the initiation of an investigation.
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3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved to a period not exceeding six months.

4. The relevant provisions of Article 8 shall be followed in the application of provisional measures.
3. The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved to a period not exceeding six months; provided that where there exists a likelihood of recurrent injurious dumping, as defined in paragraph 4 of Article 5, or repeat corporate dumping, as defined in paragraph 1(iv) of Article 11, provisional measures may be extended for a period in excess of six months.

4. Notwithstanding any other provision of this Article, where there is a likelihood of recurrent injurious dumping, as defined in paragraph 4 of Article 5, or repeat corporate dumping, as defined in paragraph 1(iv) of Article 11, the authorities may withhold appraisement at the time the investigation is initiated.

5. The relevant provisions of Article 8 shall be followed in the application of provisional measures.
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1(ii). Where for the dumped product in question the authorities determine (a) either that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and (b) that the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to levy an anti-dumping duty retroactively on those imports, the duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures.
1(ii). Where for the dumped product in question the authorities determine (a) that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and (b) that the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) which in light of timing, volume of the dumped imports, and other circumstances, is likely to postpone the remedial effect of any order so that it appears necessary to levy anti-dumping duties retroactively on those imports, the duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, provided the importers concerned have been given an opportunity to comment.

For purposes of this paragraph, a history of
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dumping may be based upon prior findings by authorities of the importing country or a third country. (iii)

Where the investigating authorities determine that recurrent injurious dumping, as defined in paragraph 4 of Article 5, or repeat corporate dumping, as defined in paragraph 1(iv) of Article 11, exists:

(a) anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied, regardless of whether the final finding of injury was based upon a finding of threat thereof or upon a finding of material retardation of the establishment of an industry; and (b) the limitation, described in the second paragraph of paragraph 1(i) above, on the amount of duty that may be collected shall not apply. (iv) A likelihood of repeat corporate dumping exists where: (a) within the last [A] years, a supplier, or persons related to the
2.-3. No comments.
supplier within the meaning of paragraph 4 of Article 5, has been subject to, or entered into, (b) or more final findings of dumping or price undertakings: (b) the margin of dumping found in each such final finding of dumping or, in the case of a price undertaking, preliminary finding of dumping, was equal to or exceeded [C] percent ad valorem; and (c) the products covered by each such finding or undertaking were all within the same general category of merchandise as the merchandise being investigated. Repeat corporate dumping exists when there has been a dumping finding after an investigation in the situation described in (vi) (a)-(c) above. Whenever the authorities concerned decide to levy duties retroactively pursuant to this paragraph, the authorities shall publish notice thereof consistent with the requirements of Article 8.5.
Article 12 - Anti-Dumping Action on behalf of a Third Country

1-4. No comments.
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<td>New Article 11A: Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to final findings within the meaning of Article 8 and reviews within the meaning of Article 9. Such tribunals or procedures shall be independent of the authority responsible for the finding or review in question, and shall provide all interested parties who participated in the administrative proceeding with identical access to review.</td>
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Article 13 - Developing Countries

It is recognized that special regard must be given by developed countries to the special situation of developing countries when considering the application of anti-dumping measures under this Code. Possibilities of constructive remedies provided for by this Code shall be explored before applying anti-dumping duties where they would affect the essential interests of developing countries. No anti-dumping measures will be taken if the dumping margin found is smaller than X% for developing countries and Y% in the case of imports originating in the least developed countries.

Article 14 - Committee on Anti-Dumping Practices

Article 15 - Consultation, Conciliation and Dispute Settlement
New Article 15:3:
3. When a Party considers that there is no sufficient evidence of either dumping or of injury to justify proceeding with the case, the Party may refer such matter to the Committee for conciliation or, in derogation of paragraphs 4 and 6 of Article 15, may request for immediate establishment of a panel to examine the matter.
MODIFICATIONS PROPOSED BY USA

MODIFICATIONS PROPOSED BY EEC

MODIFICATIONS PROPOSED BY NORDIC COUNTRIES

MODIFICATIONS PROPOSED BY CANADA
3. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing country to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Committee for conciliation. When a provisional measure has a significant impact and the Party considers the measure was taken contrary to the provisions of paragraph 1 of Article 10 of this Agreement, a Party may also refer such matter to the Committee for conciliation. In cases where matters are referred to the committee for conciliation, the Committee shall meet within thirty days to review the matter, and through its good offices, shall encourage the Parties involved to develop a mutually acceptable solution.

Article 15:3 shall become 15:4 etc..

4. No comments.
3. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution (Deletion of phrase) it may refer the matter to the Committee for conciliation. When a provisional measure has a significant impact and the Party considers the measure was taken contrary to the provisions of paragraph 1 of Article 10 of this Agreement, a Party may also refer such matter to the Committee for conciliation. In cases where matters are referred to the committee for conciliation, the Committee shall meet within thirty days to review the matter, and through its good offices, shall encourage the Parties involved to develop a mutually acceptable solution.
5. If no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 within three months, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:

(a) a written statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and (b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country.

Footnote to Art. 15:5:

1. If it is found in the dispute settlement procedure that an investigation has not been initiated in conformity with the provisions of Article 5:1 or that the investigation has been pursued in violation of the provisions of Article 5:3, a panel may, at the request of the party having initiated the dispute settlement procedure, make recommendations regarding an indemnity to the exporter(s) concerned and its appropriate amount.

5. If any Party considers that the consultation pursuant to paragraph 2 has failed to achieve a mutually agreed solution and final action has been taken by the administering authorities of the importing country, the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:

(a) a written statement of the Party making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded; and (b) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing country.

6. - 7. No comments.
5. If no mutually agreed solution has been reached after detailed examination by the Committee under paragraph 3 (Deletion of specified time period), the Committee shall, at the request of any party to the dispute, establish a panel to examine the matter, based upon:
National legislation
6. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Party in question.
(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.
National legislation

6. (a) Each government accepting or acceding to this Agreement shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of this agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Party in question.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations. Each government accepting or acceding to this Agreement shall ensure that all parties directly concerned by anti-dumping measures shall be given an opportunity to seek judicial review of measures definitively taken.
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New Article 10:
Regarding anti-circumvention, the following new article should be added:
1. **Definitive anti-dumping duties may be imposed on products that are introduced into the commerce of an importing country after having been assembled or produced in the importing country provided that:**
   - assembly or production is carried out by a party which is related or associated to any of
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the manufacturers
whose exports of the
like product are subject
to anti-dumping
measures,
- the assembly or
production operation
was started or
substantially increased
after the opening of the
anti-dumping
investigation,
- the value of parts or
materials used in the
assembly or production
operation and
originating in the
country of exportation
of the product subject
to the anti-dumping
duty exceeds the value
of all other parts or
materials used by at
least 50%. In applying
this provision, account
shall be taken of the
circumstances of each
case, and inter alia, of
the variable costs
incurred in the
assembly or production
operation and of the
research and
development carried
out and the technology
ANTI-DUMPING CODE MODIFICATIONS MODIFICATIONS MODIFICATIONS
PROPOSED BY HONG PROPOSED BY REPUBLIC PROPOSED BY JAPAN
KONG OF KOREA
applied within the importing country. The rate of anti-dumping duty shall be that applicable to the manufacturer in the country of origin of the like product subject to an anti-dumping measure to which the party in the importing country carrying out the assembly or production is related or associated. The amount of duty collected shall be proportional to that resulting from the application of the rate of the anti-dumping duty applicable to the exporter of the complete product on the CIF value of the parts or materials imported; it shall not exceed that required to prevent circumvention of the anti-dumping duty.

3. The provisions of this Code concerning investigation, procedure, and undertakings apply to all questions arising under this article.
ANTI-DUMPING CODE MODIFICATIONS MODIFICATIONS MODIFICATIONS
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KONG OF KOREA
New Article X: Investigating authorities should establish procedures to allow for and consider representations by interested parties, including consumers of the product under investigation, following a final determination of injury, that the application of anti-dumping duties in full or in part would not be in the public interest. It remains for the authorities in the investigating country to determine whether or not a reduction in the anti-dumping duty is appropriate.