

AGREEMENT ON IMPLEMENTATION OF
ARTICLE VI OF THE GENERAL AGREEMENT ON
TARIFFS AND TRADE

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;

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;

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:

PART I

ANTI-DUMPING CODE

Article 1

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 initiated¹ and conducted in accordance with the provisions of this Code.

¹The 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.

5.

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.

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.

4. It must be demonstrated that the dumped imports are, through the effects⁴ of dumping, causing injury within the meaning of this Code. There may be other factors⁵ 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, which includes the like product, for which the necessary information can be provided.

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.⁶

⁴As set forth in paragraphs 2 and 3 of this Article.

⁵Such 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

⁶One 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.

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

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 related⁷ 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 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. 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 levied⁸ 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 shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 7 of this Code, and adequate assurances in this regard have not

⁷An understanding among Parties should be developed defining the word "related" as used

been promptly given, and (2) such duties cannot be levied on specific producers which supply the area in question.

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. The provisions of paragraph 5 of Article 3 shall be applicable to this Article.

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 industry⁹

4. An anti-dumping proceeding shall not hinder the procedures of customs clearance.
5. Investigations shall, except in special circumstances, be concluded within one year after their initiation.

Article 6

Evidence

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 to the anti-dumping investigation in question. They shall also have the right, on justification, to present evidence orally.
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 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.¹⁰ 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.
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 their satisfaction from appropriate sources that the information is correct.¹¹

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

¹¹Parties 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.

6.

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.

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 this 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.

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.

4. Price undertakings may be suggested by the authorities of the importing country, but no exporter shall be forced to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

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.

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.

duty being equivalent to the amount by which the export price is less than the basic price established for this purpose, not exceeding the lowest normal price in the supplying country or countries where normal conditions of competition are prevailing. It is understood that, for products which are sold below this already established basic price, a new anti-dumping investigation shall be carried out in each particular case, when so demanded by the interested parties and the demand is supported by relevant evidence. In cases where no dumping is found, anti-dumping duties collected shall be reimbursed as quickly as possible. Furthermore, if it can be 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.

5. Public notice shall be given of any preliminary or final findings whether affirmative or negative and of the 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 findings 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.

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.
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.

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 the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation.

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.

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.

Article 11

Retroactivity

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 paragraph 1 of Article 8 and paragraph 1 of Article 10, respectively, enters into force, except that in cases:

- (i) Where a final finding of injury (but not of a threat hereof or of a material retardation of the establishment of an industry) is made or, in the case of a final finding of threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a finding 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.

- (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 practices 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.

2. Except as provided in paragraph 1 above where a finding of threat of injury or material retardation is made (but no injury has yet occurred) application of

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 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.

PART II

Article 14

Committee on Anti-Dumping Practices

1. There shall be established under this Agreement a Committee on Anti-

before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Party, it shall inform the Party involved. It shall obtain the consent of the Party and any firm to be consulted.

4. Parties shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports will be available in the GATT secretariat for inspection by government representatives. The Parties shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months.

Article 15

Consultation, Conciliation and Dispute Settlement¹⁴

1. Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded, by another Party or Parties, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultation. The Parties concerned shall initiate consultation promptly.

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.¹⁵

¹⁴If disputes arise between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT.

¹⁵In this connection the Committee may draw Parties' attention to those cases in which, in its view, there are no reasonable bases supporting the allegations made.

4. Parties shall make their best efforts to reach a mutually satisfactory solution throughout the period of conciliation.

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.

6. Confidential information provided to the panel shall not be revealed without formal authorization from the person or authority providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the authority or person providing the information, will be provided.

7. Further to paragraphs 1-6 the settlement of disputes shall *mutatis mutandis* be governed by the provisions of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance. Panel members shall have relevant experience and be selected from Parties not parties to the dispute.

PART III

Article 16

Final Provisions

1. No specific action against dumping of exports from another Party can be taken except in accordance with the provisions of the General Agreement, as interpreted by this Agreement.¹⁶

¹⁶This is not intended to preclude action under other relevant provisions of the General Agreement, as appropriate.

Acceptance and accession

2. (a) This Agreement shall be open for acceptance by signature or otherwise by governments contracting parties to the GATT and by the European Economic Community.

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

(d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

Reservations

3. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

4. This Agreement shall enter into force on 1 January 1980 for the governments¹⁷ which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

Denunciation of the 1967 Agreement

5. Acceptance of this Agreement shall carry denunciation of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, done at Geneva on 30 June 1967, which entered into force on 1 July 1968, for Parties to the 1967 Agreement. Such denunciation shall take effect for each Party to this Agreement on the date of entry into force of this Agreement for each such Party.

¹⁷The term "government" is deemed to include the competent authorities of the European Economic Community.

party to the GATT a certified copy thereof and of each amendment thereto pursuant to paragraph 8, and a notification of each acceptance thereof or accession thereto pursuant to paragraph 2, and of each withdrawal therefrom pursuant to paragraph 9 of this Article.

Registration

13. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.