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After caucusing among ourselves, we have what we hope will be a fairly entertaining presentation. I will begin with a very quick synopsis of anti-dumping law in the United States and Canada.

We then have Ivan Feltham and Stuart Salen doing a joint presentation, which I think you will find quite interesting. It will present a hypothetical case study on how companies facing a problem would deal with competition laws. Finally, Doug Rosenthal has the magisterial task of commenting on all of the above. For my part on anti-dumping law, I will try to keep it on a simplistic level. I will begin with a quick history of both countries.

The first anti-dumping laws were passed in Canada in 1904 and in the United States in 1916. They were aimed at the U.S. steel industry and at the European chemical industry. The original anti-dumping laws had antitrust and competition concerns which reflected the potential concerns of competition, above all from the United States. I mentioned that, not to pick on my good friends in the steel industry or chemical industry, but rather to note the irony that the U.S. steel industry which was the first target of these laws has also become the largest user of the law in the United States. Similarly, U.S. chemical exporters became the largest single target under European chemical anti-dumping laws policy.

All of the rhetoric since then has always been about the "fairness" tradition, but as Roger Phillips mentioned, more practical concerns arose very early on in both the United States and Canada. For instance, if you have a high custom duty, let us say a fifty percent custom duty, there is a temptation to invoice your price quite low in order to reduce your custom duties. That practice immediately attracted the attention of the customs personnel in both countries who enforce these laws. Many of the practical problems one runs into in both countries as exporters dealing with these laws is a result of a what I will call "customs mentality." That said, a level playing field is the main point of anti-dumping law, and the United States and Canada are quite similar in this regard. A great deal has been written by scholars in both countries on these laws, some of which has been done in extensive detail. John Jackson edited a book on anti-dumping practice, which came out about this time last year, with chapters on U.S., Canadian, European Community, and Australian anti-

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dumping practices. The anti-dumping laws have to be based on The General Agreement on Tariffs and Trade ("GATT") in the United States and Canada. Therefore, there are very basic similarities regarding how to show why there is a difference in prices, lower price and export markets. Beginning in 1975, the United States began examining sales falling below fully allocated costs. Roger Phillips, I believe, mentioned that in 1967 at the GATT negotiations, the United States stated that a cost of production clause could not possibly be administerd, because it would be too complex. This new standard was put in by the U.S. Congress in 1974, effective in 1975 , to fix one case to placate one constituent of Senator Long. All cases in Canada and the European Community use the fully allocated cost as a standard. Well, what is ironic about this, as my antitrust colleagues in the United States remind me, is that the fully allocated cost standard first appeared in anti-dumping law just as Areeda and Turner were proposing average variable cost for domestic predatory pricing cases. What you have, therefore, is anti-dumping going one way, and competition policy going another.

Now, in addition to showing "unfair" pricing, you also have to show in theory, injury, and, again, in theory, the injury standard picks up a lot of competition policy concerns. Anti-dumping law in both countries only covers goods, dumping laws do not apply to services. This is unlike anti-trust law, although there is some application of the European Community's dumping rules to shipping services, and the United States has stated it would apply dumping laws to computer software on hard disc. But if you can apply antidumping law to computer software on hard disc, then you can apply it to more, including applying it to data on diskettes. If you think about the gap between marginal cost (or average variable cost), and fully allocated cost, even in historically capital-intensive industries like steel or chemicals, these are nothing compared to the marginal cost of additional kilowatts of electricity or other services. Consider what the cost is for one automatic teller machine transaction; there is a whole world out there for trade lawyers to explore.

Unlike the antitrust or competition law, anti-dumping law in both countries does not provide for any fines, penalties, or damages. Mr. Zundel gave us an example of this. Consequently, the individual who is injured has no direct remedy. To summarize, anti-dumping law in both countries rejects the consumer and national treatment theory, and treats foreigners differently. In fact, there are more anti-dumping cases throughout the United States each year than there are civil suits or private claims involving domestic price discrimination.

Finally, in looking to the future, the Uruguay Round is not going to change any of the points I mentioned regarding anti-dumping law. There are discussions of changes in the anti-dumping code of the type that Bob McNeill mentioned, but the Uruguay Round is not going to dismantle the basic structure.

One alternative aspect of competition law rather than anti-dumping

law is something that was mentioned much earlier, which is the possibility of informal dispute resolution before progressing through an entire proceeding. I tried to get this into the minds of the U.S.-Canada Committee negotiators during the talks, but without success. The negotiators did not want to hear about it, although I would warn you that I have seen trade cases where it would have worked. That completes my discussion of anti-dumping law, and now we turn it over to the competition.