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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

LAWS AND REGULATIONS UNDER ARTICLES 18.5
AND 32.6 OF THE AGREEMENTS

CANADA

Note by the Secretariat

The attached laws and regulations of Canada replace the text of laws and regulations circulated in G/ADP/N/1/CAN/2-G/SCM/N/1/CAN/2. The attached text comprises:

Legislation

-an unofficial integrated text, which has not been sanctioned by the Canadian Department of Justice, of the Special Import Measures Act. This text is unchanged from that circulated in document G/ADP/N/1/CAN/2-G/SCM/N/1/CAN/2.

-an unofficial integrated text of the Canadian International Trade Tribunal Act. This text consolidates the text circulated in document G/ADP/N/1/CAN/2-G/SCM/N/1/CAN/2, but contains no changes. The integrated text was previously circulated in document G/SG/N/1/CAN/2 (4 April 1996).

Regulations

-a consolidated version of the Special Import Measures Act Regulations. This text consolidates the text circulated in document G/ADP/N/1/CAN/2-G/SCM/N/1/CAN/2, and incorporates changes notified on 6 June 1997. The changes to the Regulations are set forth in boldface type.

-Canadian International Trade Tribunal Rules, Canada Gazette, Part II, 28 August 1991 and Canadian International Trade Tribunal Rules (amendment), Canada Gazette, Part II, 29 December 1993. These texts are unchanged from those circulated in document G/ADP/N/1/CAN/2-G/SCM/N/1/CAN/2.

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THE DEPARTMENT OF JUSTICE

Anti-dumping and Countervailing Division

January 1995

CHAPTER S-15

An Act respecting the imposition of anti-dumping
and countervailing duties

SHORT TITLE

Short title

1. This Act may be cited as the Special Import Measures Act. 1984, c. 25, s. 1.

INTERPRETATION

Definitions

2. (1) In this Act,

"amount of subsidy"

"montant de subvention"

"amount of subsidy", in relation to any goods, means the amount determined in accordance with Section 30.4;

"arbitration body"

"organs d'arbitrage"

"arbitration body" means the arbitration body referred to in Article 8.5 of the Subsidies Agreement;

"Canadian Secretary"

"secrétaire canadien"

"Canadian Secretary" means

(a) when Part I.1 is in force, the Secretary appointed pursuant to Subsection 14(1) of the North American Free Trade Agreement Implementation Act, and

(b) when Part II is in force, the Secretary appointed pursuant to subsection 77.24(1);

"Committee"

"Comité"

"Committee" means the Committee on Subsidies and Countervailing Measures established by Article 24 of the Subsidies Agreement;

"country of export"

"pays ..."

"country of export" means, in the case of dumped goods, the country from which the goods were shipped directly to Canada or, if the goods have not been shipped directly to Canada, the country from which the goods would be shipped directly to Canada under normal conditions of trade and, in the case of subsidized goods, the country in which the subsidy originated;

"Deputy Minister"

"sous-ministre"

"Deputy Minister" means the Deputy Minister of National Revenue;

"designated officer"

"agent..."

"designated officer" means any officer, or any officer within a class of officers, designated pursuant to Section 59 of the Customs Act;

"domestic industry"

"branche de production national"

"domestic industry" means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers;

"dumped"

"sous-évalué"

"dumped", in relation to any goods, means that the normal value of the goods exceeds the export price thereof;

"duty"

"droits"

"duty" means any duty, including provisional duty, imposed by virtue of this Act;

"enterprise"

"entreprise"

"enterprise" includes a group of enterprises, an industry and a group of industries;

"export price"

"prix..."

"export price" means export price determined in accordance with sections 24 to 30;

"export subsidy"

"subvention à l'exportation"

"export subsidy" means a subsidy or portion of a subsidy that is contingent, in whole or in part, on export performance;

"Free Trade Agreement"

"Accord de libre-échange"

"Free Trade Agreement" has the meaning assigned to the term "Agreement" by section 2 of the Canada-United States Free Trade Agreement Implementation Act;

"government"

"gouvernement"

"government", in relation to any country other than Canada, means the government of that country and includes

(a) any provincial, state, municipal or other local or regional government in that country,

(b) any person, agency or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state, municipal or other local or regional government, and

(c) any association of sovereign states of which that country is a member;

"government of a NAFTA country"

"gouvernement..."

"government of a NAFTA country" means such department, agency or other body of the government of a NAFTA country as is prescribed;

"importer"

"importateur"

"importer", in relation to any goods, means the person who is in reality the importer of the goods;

"injury"

"dommage"

"injury" means material injury to a domestic industry;

"insignificant"

"minimale"

"insignificant" means,

(a) in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods, and

(b) in relation to an amount of subsidy, an amount of subsidy that is less than one per cent of the export price of the goods;

"like goods"

"marchandises similaires"

"like goods", in relation to any other goods, means

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods;

"margin of dumping"

"marge de dumping"

"margin of dumping", in relation to any goods, means, subject to sections 30.1, 30.2 and 30.3, the amount by which the normal value of the goods exceeds the export price of the goods;

"member" [Repealed, R.S., 1985, c. 47 (4th Supp.), s. 52]

"Minister"

"ministre"

"Minister" means the Minister of National Revenue;

"NAFTA country"

"pays ALENA"

"NAFTA country" has the meaning assigned that expression by subsection 2 (1) of the North American Free Trade Agreement Implementation Act, but does not include Canada;

"negligible"

"négligeable"

"negligible" means, in respect of the volume of dumped goods of a country,

(a)less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods,

except that

(b)where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of

the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to in paragraph (a),

the volume of dumped goods of any of those countries is not negligible;

"non-actionable subsidy"

"subventions ne donnant pas lieu à une action"

"non-actionable subsidy" means

(a) a subsidy that is not specific as determined pursuant to subsections (7.1) to (7.4),

(b) a subsidy for

(i) industrial research assistance,

(ii) pre-competitive development assistance,

(iii) assistance to disadvantaged regions,

(iv) assistance for the adaptation of existing facilities to new environmental standards, or

(v) assistance for research activities conducted by institutions of higher education and independent research establishments,

that meets the prescribed criteria, or

(c) subject to subsection (1.4), a domestic support measure for an agricultural product listed in Annex 1 of the Agreement on Agriculture, being part of Annex 1A to the WTO Agreement, that conforms to the provisions of Annex 2 to the Agreement on Agriculture;

"normal value"

"valeur..."

"normal value" means normal value determined in accordance with sections 15 to 23 and 29 and 30;

"North American Free Trade Agreement"

"Accord de libre-échange nord-américain"

"North American Free Trade Agreement" has the meaning assigned to the word "Agreement" by subsection 2(1) of the North American Free Trade Agreement Implementation Act;

"order or finding"

"Ordonnance ou conclusions"

"order or finding", in relation to the Tribunal,

(a) means an order or finding made by the Tribunal pursuant to section 43 or 44 that has not been rescinded pursuant to subsection 91(3), and

(b) includes, for the purposes of sections 3 to 6, 76 and 76.1, an order or finding made by the Tribunal pursuant to subsection 91(3)

that has not been rescinded pursuant to section 76 or 76.1 but, where the order or finding has been amended one or more times pursuant to either of those sections, as last so amended;

"person"

"personne"

"person" includes a partnership and an association;

"prescribed"

Version anglaise seulement

"prescribed", in relation to a form, means prescribed by the Deputy Minister and, in any other case, means prescribed by regulation;

"prohibited subsidy"

"subvention prohibée"

"prohibited subsidy" means a subsidy that is prohibited by virtue of being

(a)an export subsidy, or

(b)a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export;

"properly documented"

"dossier complet"

"properly documented", in relation to a complaint respecting the dumping or subsidizing of goods, means that

(a)the complaint

(i)alleges that the goods have been or are being dumped or subsidized, specifies the goods and alleges that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury,

(ii)states in reasonable detail the facts on which the allegations referred to in subparagraph (i) are based, and

(iii)makes such other representations as the complainant deems relevant to the complaint, and

(b) the complainant provides

(i) such information as is available to the complainant to prove the facts referred to in subparagraph (a)(ii),

(ii) such information as is prescribed, and

(iii) such other information as the Deputy Minister may reasonably require;

"provisional duty"

"droits provisoires"

"provisional duty" means duty imposed under section 8;

"regular member" [Repealed, R.S., 1985, c. 47 (4th Supp.), s. 52]

"release"

"dédouanement"

"release", in respect of goods, means to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada;

"retardation"

"retard"

"retardation" means material retardation of the establishment of a domestic industry;

"sale"

"vente"

"sale" includes leasing and renting, an agreement to sell, lease or rent and an irrevocable tender;

"Secretary"

"secrétaire"

"Secretary" means the Secretary of the Tribunal;

"Subsidies Agreement"

"Accord sur les subventions"

"Subsidies Agreement" means the Agreement on Subsidies and Countervailing Measures, being part of Annex 1A to the WTO Agreement;

"subsidized goods"

"marchandises subventionnées"

"subsidized goods" means

(a) goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of which a subsidy has been or will be paid, granted, authorized or otherwise provided, directly or indirectly, by the government of a country other than Canada, and

(b) goods that are disposed of at a loss by the government of a country other than Canada, and includes any goods in which, or in the production, manufacture, growth, processing or the like of which, goods described in paragraph (a) or (b) are incorporated, consumed, used or otherwise employed;

"subsidy"

"subvention"

"subsidy" means

(a) a financial contribution by a government of a country other than Canada in any of the circumstances outlined in subsection (1.6) that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of

goods but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback, or

(b) any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, being part of Annex 1A to the WTO Agreement, that confers a benefit;

"Tribunal"

"Tribunal"

"Tribunal" means the Canadian International Trade Tribunal established by subsection 3(1) of the Canadian International Trade Tribunal Act;

"undertaking" or "undertakings"

"engagement..."

"undertaking" or "undertakings" means an undertaking or undertakings with respect to goods that are the subject of a dumping or subsidizing investigation under this Act given in writing to the Deputy Minister in any of the following circumstances:

(a) in the case of dumped goods, an undertaking given by an exporter who accounts for, or undertakings given individually by exporters who account for, all or substantially all the exports to Canada of the dumped goods where the exporter or each exporter, as the case may be, undertakes in his undertaking

(i) to revise, in the manner specified in his undertaking, the price at which he sells the goods to importers in Canada, or

(ii) to cease dumping the goods in Canada, and

(b) in the case of subsidized goods,

(i) an undertaking given by an exporter who accounts for, or undertakings given individually by exporters who account for, all or substantially all the exports to Canada of the subsidized goods, where the exporter or each exporter, as the case may be,

(A) has the consent of the government of the country of export of the goods to give the undertaking, and

(B) undertakes to revise, in the manner specified in his undertaking, the price at which he sells the goods to importers in Canada, or

(ii) an undertaking given by the government of a country that accounts for, or undertakings given by the governments of countries that account for, all or substantially all the exports to Canada of the subsidized goods where the country or each country, as the case may be, undertakes in its undertaking

(A) to eliminate the subsidy on goods exported to Canada from that country,

(B) to limit the amount of subsidy on goods exported to Canada from that country,

(C) to limit the quantity of the goods to be exported to Canada from that country, or

(D) otherwise to eliminate the effect of the subsidizing on the production in Canada of like goods,

in the manner specified in its undertaking;

"United States Government"

"gouvernement des Etats-Unis"

"United States Government" means such department, agency or other body of the Federal Government of the United States as is prescribed.

"WTO Agreement"

"Accord sur l'OMC"

"WTO Agreement" has the meaning assigned to the term "Agreement" by subsection 2(1) of the World Trade Organization Agreement Implementation Act.

When domestic industry based on regional markets

(1.1) In exceptional circumstances, the territory of Canada may, for the production of any goods, be divided into two or more regional markets and the domestic producers of like goods in any of those markets may be considered to be a separate domestic industry where

(a) the producers in the market sell all or almost all of their production of like goods in the market; and

(b) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

Producers related to exporters or importers

(1.2) For the purposes of the definition "domestic industry" in subsection (1), a domestic producer is related to an exporter or an importer of dumped or subsidized goods where

(a) the producer either directly or indirectly controls, or is controlled by, the exporter or importer,

(b) the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person, or

(c) the producer and the exporter or the importer, as the case may be, directly or indirectly control a third person,

and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.

Where there is deemed to be control

(1.3) For the purposes of subsection (1.2), a person is deemed to control another person where the first person is legally or operationally in a position to exercise restraint or direction over the other person.

When domestic support measure ceases to be a non-actionable subsidy

(1.4) A domestic support measure referred to in paragraph (c) of the definition "non-actionable subsidy" in subsection (1) ceases to be a non-actionable subsidy on the day on which the implementation period in respect of the Agreement on Agriculture referred to in that paragraph, as defined in Article 1 of that Agreement for the purposes of Article 13 of that Agreement, expires.

Threat of injury

(1.5) For the purposes of this Act, the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

Financial contribution

(1.6) For the purposes of paragraph (a) of the definition "subsidy" in subsection (1), there is a financial contribution by a government of a country other than Canada where

(a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;

(b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;

(c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or

(d) the government permits or directs a non-governmental body to do any thing referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

Definition of "associated persons"

(2) For the purposes of this Act, the following persons are "associated persons" or persons associated with each other, namely,

(a) persons related to each other; or

(b) persons not related to each other, but not dealing with each other at arm's length.

Persons related to each other

(3) For the purposes of subsection (2), persons are related to each other if

(a) they are individuals connected by blood relationship, marriage or adoption within the meaning of subsection 251(6) of the Income Tax Act;

(b) one is an officer or director of the other;

- (c) each such person is an officer or director of the same two corporations, associations, partnerships or other organizations;
- (d) they are partners;
- (e) one is the employer of the other;
- (f) they directly or indirectly control or are controlled by the same person;
- (g) one directly or indirectly controls or is controlled by the other;
- (h) any other person directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of each such person;
or
- (i) one directly or indirectly owns, holds or controls five per cent or more of the outstanding voting stock or shares of the other.

Persons dealing at arm's length

(4) For the purposes of paragraph (2)(b), it is a question of fact whether persons not related to each other were at a particular time dealing with each other at arm's length.

(5) Repealed [Bill C-57]

Agreement affecting countervailing duty

(6) Notwithstanding the definition "amount of subsidy", where, in relation to any subsidized goods, the manufacturer, producer, vendor or exporter thereof or the government of a country other than Canada, undertakes, directly or indirectly in any manner whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the countervailing duty that may be levied on the goods, the amount of subsidy on the goods is, for the purposes of this Act, the amount

of subsidy determined and adjusted in such manner as is provided under that definition plus the amount of the indemnity, payment or reimbursement.

Interpretation of provisions that apply to both dumped and subsidized goods

(7) Where, by its terms, any provision of this Act applies to both dumped and subsidized goods, the application of the provision

(a) to subsidized goods shall not be taken into account in an investigation, inquiry or other proceeding or matter under this Act relating to the dumping of goods; and

(b) to dumped goods shall not be taken into account in an investigation, inquiry or other proceeding or matter under this Act relating to the subsidizing of goods.

Criteria and conditions for non-specificity

(7.1) A subsidy is not specific where the criteria or conditions governing eligibility for, and the amount of, the subsidy are

(a) objective;

(b) set out in a legislative, regulatory or administrative instrument or other public document; and

(c) applied in a manner that does not favour or is not limited to a particular enterprise.

When subsidy is specific

(7.2) A subsidy is specific where it is

(a) limited, pursuant to an instrument or document referred to in paragraph (7.1)(b) to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or

(b) a prohibited subsidy.

Determination of specificity by Deputy Minister

(7.3) Notwithstanding that a subsidy is not limited in the manner referred to in paragraph (7.2)(a), the Deputy Minister may determine the subsidy to be specific having regard as to whether

(a) there is exclusive use of the subsidy by a limited number of enterprises;

(b) there is predominant use of the subsidy by a particular enterprise;

(c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and

(d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

Additional considerations

(7.4) Where any of the factors listed in paragraphs (7.3)(a) to (d) is present, the Deputy Minister shall consider whether the presence is due to

(a) the extent of diversification of economic activities within the jurisdiction of the granting authority, or

(b) the length of time that the subsidy program has been in operation,

and where the Deputy Minister is of the opinion that the presence is due to one of the reasons set out in paragraph (a) or (b), the Deputy Minister may

find the subsidy not to be specific notwithstanding that, were it not for that opinion, the Deputy Minister would have found the subsidy to be specific.

Law relating to the customs

(8) For greater certainty, this Act shall be considered, for the purposes of the Customs Act, to be a law relating to the customs.

Powers, duties and functions of Deputy Minister

(9) Any power, duty or function of the Deputy Minister under this Act may be exercised or performed by any person authorized by the Deputy Minister to do so and, if so exercised or performed, shall be deemed to have been exercised or performed by the Deputy Minister.

PART I

SPECIAL IMPORT MEASURES

LIABILITY FOR ANTI-DUMPING,
COUNTERVAILING AND PROVISIONAL DUTIES

Anti-dumping and Countervailing Duty

Anti-dumping and countervailing duty

3. (1) Subject to Section 7.1, there shall be levied, collected and paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding, before the release of the goods, that the dumping or subsidizing of goods of the same description has caused injury or retardation or is threatening to cause injury, a duty as follows:

(a) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the imported goods; and

(b) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of subsidy on the imported goods.

Duty where undertaking violated

(2) Where the Tribunal has made an order or finding referred to in Subsection (1) in respect of goods that are subject to an undertaking referred to in Section 7.1 and the undertaking is subsequently violated, there shall be levied, collected and paid on all of those goods that were released on or after the day on which the undertaking was violated, a duty as provided under paragraphs (1)(a) and (b).

Other cases

4. (1) Subject to Section 7.1, there shall be levied, collected and paid a duty as set out in Subsections (3) and (4) on all dumped and subsidized goods imported into Canada

(a) in respect of which the Tribunal has made an order or finding, after the release of the goods, that the dumping or subsidizing of goods of the same description

(i) has caused injury, or

(ii) would have caused injury except for the fact that provisional duty was applied in respect of the goods; and

(b) that were released during the period beginning on the day on which the preliminary determination is made with respect to the goods and ending on the day on which the Tribunal makes the order or finding.

Where undertaking subsequently terminated

(2) There shall be levied, collected and paid a duty as set out in Subsections (3) and (4) on all dumped and subsidized goods imported into Canada

(a) that are the subject of an undertaking accepted by the Deputy Minister under subsection 49(1) that was terminated under paragraph 52(1)(d);

(b) in respect of which the Tribunal has made an order or finding, after the release of the goods, that the dumping or subsidizing of goods of the same description

(i) has caused injury, or

(ii) would have caused injury except for the fact that provisional duty was applied in respect of the goods; and

(c) that were released, where paragraph 52(1)(a), (b) or (c) applies, during the period beginning on the day on which the preliminary determination was made and ending on the day the undertaking was accepted, and

(i) where paragraph 52(1)(a) applies, during the period beginning on the later of

(A) the day on which the undertaking is violated, and

(B) the ninetieth day before the day on which notice of the termination was given under paragraph 52(1)(e), and ending on the day on which the Tribunal makes the order or finding referred to in paragraph (b), or

(ii) where paragraph 52(1)(b) or (c) applies, beginning on the day on which notice of termination was given under paragraph 52(1)(e),

and ending on the day on which the Tribunal makes the order or finding referred to in paragraph (b).

Amount of duty

(3) The duty applicable to goods under subsection (1) or (2) is:

(a) in the case of dumped goods, an anti-dumping duty in an amount that is equal to the margin of dumping of the goods; and

(b) in the case of subsidized goods, a countervailing duty in an amount that is equal to the amount of subsidy on the goods.

Limitation

(4) The duty referred to in Subsection (3) shall not exceed the duty, if any, paid or payable in respect of the goods under Section 8.

Anti-dumping duty

5. There shall be levied, collected and paid on all dumped goods imported into Canada:

(a) in respect of which the Tribunal has made an order or finding, after the release of the goods, that

(i) either

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures, or

(B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury, and

(ii) injury has been caused by reason of the fact that the imported goods

(A) constitute a massive importation into Canada, or

(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time,

and in order to prevent the recurrence of the injury, it appears necessary to the Tribunal that duty be assessed on the imported goods, and

(b) that were released during the period of 90 days preceding the day on which the Deputy Minister made a preliminary determination of dumping in respect of the goods or goods of that description, other than goods that were released before the initiation of an investigation referred to in Section 31,

an anti-dumping duty in an amount equal to the margin of dumping of the imported goods.

Countervailing duty

6. Where any subsidy on subsidized goods is a prohibited subsidy, there shall be levied, collected and paid on all such subsidized goods imported into Canada:

(a) in respect of which the Tribunal has made an order or finding, after the release of the goods, that

(i) injury has been caused by reason of the fact that the imported goods

(A) constitute a massive importation into Canada, or

(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time, and

(ii) a countervailing duty should be imposed on the subsidized goods in order to prevent the recurrence of such injury,

(b) that were released during the period of 90 days preceding the day on which the Deputy Minister made a preliminary determination of subsidizing in respect of the goods or goods of that description, other than goods that were released before the initiation of an investigation referred to in Section 31, and

(c) in respect of which the Deputy Minister has made a specification pursuant to Clause 41(1)(a)(iv)(C),

a countervailing duty in an amount equal to such of the amount of the subsidy on the imported goods as is a prohibited subsidy.

Governor in Council may impose countervailing duty by order

7. (1) The Governor in council may order an investigation to determine the amount of subsidy on any subsidized goods that are the product of a country specified in the order, and where

(a) the Deputy Minister has, by means of the investigation, determined that amount, and

(b) the Committee has authorized Canada to impose countervailing duties on the subsidized goods,

the Governor in Council may, on the recommendation of the Minister of Finance, by order impose a countervailing duty on any subsidized goods that are the product of that country and that are of the same description as the goods in respect of which the Deputy Minister has determined the amount of subsidy and, where a countervailing duty is so imposed, there shall, subject to Subsection (2), be levied, collected and paid on all such subsidized goods imported into Canada a countervailing duty in the amount specified in the order in respect of the goods.

Duty not to exceed amount of subsidy

(2) Where subsidized goods on which a countervailing duty has been imposed pursuant to Subsection (1) are imported into Canada and the amount of subsidy on the imported goods is less than the amount of the duty so imposed, there shall be levied, collected and paid on the goods pursuant to this Section a countervailing duty only in the amount of subsidy on the goods.

Non-application

7.1 Sections 3 and 4 do not apply in respect of goods in respect of which an undertaking has been accepted and not terminated.

Provisional Duty

Imposition of provisional duty

8. (1) Where the Deputy Minister makes a preliminary determination of dumping or subsidizing in an investigation under this Act and considers that the imposition of provisional duty is necessary to prevent injury, retardation or threat of injury, the importer of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applies and that are released during the period commencing on the day the preliminary determination is made and ending on the earlier of:

(a) the day on which the Deputy Minister causes the investigation to be terminated pursuant to Subsection 41(1) with respect to goods of that description, and

(b) the day on which the Tribunal makes an order or finding with respect to goods of that description,

shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods,

(c) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of or the estimated amount of subsidy on the imported goods, or

(d) post or cause to be posted security in a prescribed form and in an amount or to a value not greater than the estimated margin of dumping of or the estimated amount of subsidy on the imported goods,

at the option of the importer.

Idem

(1.1) Where an order or finding of the Tribunal under subsection 43(1), 76(4.1) respecting a review pursuant to subsection 76(2.1), or 91(3), other than an order or finding described in any of Sections 3 to 6, is referred back to the Tribunal under Subsection 77.015(3) or (4) or 77.019(5), or under Subsection 77.15(3) or (4) or 77.19(4), the importer of dumped or subsidized goods that are of the same description as any goods to which the order or finding applies and that are released during the period commencing on the day on which the preliminary determination is made and ending on the day on which the Tribunal makes an order or finding, on the referral back, with respect to goods of that description, shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods, at the option of the importer,

(a) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of, or the estimated amount of subsidy on, the imported goods; or

(b) post or cause to be posted security in the prescribed form and in an amount or to a value not greater than the estimated margin of dumping of, or the estimated amount of subsidy on, the imported goods.

Return of provisional duty

(2) Any provisional duty paid or security posted pursuant to Subsection (1) or (1.1) by or on behalf of an importer in respect of the importation of dumped or subsidized goods of any description shall

(a) be returned to the importer forthwith after

(i) the Deputy Minister causes the investigation to be terminated pursuant to Subsection 41(1) with respect to goods of that description,

(ii) all proceedings respecting the dumping or subsidizing of goods of that description are terminated as described in Section 47, or

(iii) the Tribunal makes an order or finding with respect to goods of that description if the order or finding is only to the effect that the dumping or subsidizing of those goods is threatening to cause injury; and

(b) except to the extent of any duty payable in respect of the imported goods, be returned to the importer forthwith after a determination is made in respect of the imported goods by a designated officer pursuant to such of paragraphs 55(1) (c) to (e) as are applicable.

Interest

(3) Where any provisional duty is returned to an importer pursuant to Subsection (2), the importer shall be paid interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the duty was paid and the time it is returned.

Amounts under ten dollars

(4) Where interest owing under this section is less than ten dollars, no interest shall be paid.

Suspension of collection

(5) Where the Deputy Minister accepts an undertaking with respect to dumped or subsidized goods, the collection of provisional duties on any dumped or subsidized goods, as the case may be, that are of the same description as any goods to which the preliminary determination applies is suspended for the period during which the undertaking is in force.

Resumption of collection

(6) Where the Deputy Minister terminates an undertaking pursuant to Subsection 51(1) or 52(1) with respect to dumped or subsidized goods, the collection of provisional duties on those goods is resumed and the importer of dumped or subsidized goods that are of the same description as any goods to which the preliminary determination applied and that are released during the period beginning on the day on which the undertaking was terminated and ending on the earlier of:

(a) the day on which the Deputy Minister causes the investigation to be terminated pursuant to Subsection 41(1) with respect to goods of that description, and

(b) the day on which the Tribunal makes an order or finding with respect to goods of that description,

shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods,

(c) pay or cause to be paid on the imported goods provisional duty in an amount not greater than the estimated margin of dumping of, or the estimated amount of the subsidy on, the imported goods, or

(d) post or cause to be posted security in a prescribed form and in an amount or to a value not greater than the estimated margin of dumping of, or the estimated amount of the subsidy on, the imported goods,

at the option of the importer.

Payment of Duty During Court Proceedings and Proceedings under Part I.1 or II

Duty ceases where order or finding set aside by court

9. (1) Where proceedings are commenced by an application for judicial review under the Federal Court Act, or an application under Section 96.1 of this Act, to review and set aside an order or finding of the Tribunal pursuant to which duty is leviable, collectable and payable (in this Section referred to as "payable") under this Act on goods imported into Canada that are of the same description as any goods to which the order or finding applies, duty continues, notwithstanding any order or decision that may be made or given in the course of the proceedings, to be so payable pursuant to the order or finding on imported goods of that description during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the order or finding being set aside or being set aside in relation to particular goods, in which case:

(a) duty ceases, on the final disposition of the proceedings, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and

(b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).

Definition of "proceedings"

(2) In Subsection (1), "proceedings", in relation to an application made to the Federal Court of Appeal, includes proceedings on any appeal from any decision of that Court on the application.

Duty ceases where order or finding rescinded pursuant to review

9.01 (1) Where a review is requested under Part I.1 of an order or finding of the Tribunal pursuant to which duty is leviable, collectable and payable (in this Section referred to as "payable") under this Act on goods of a NAFTA country imported into Canada that are of the same description as any goods to which the order or finding applies, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of that description during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the order or finding being rescinded or being rescinded in relation to particular goods, in which case:

(a) duty ceases, on the order or finding being so rescinded, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and

(b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).

Suspension of S. 9.1

(2) The operation of Section 9.1 is suspended during the period in which subsection (1) is in force.

Duty ceases where order or finding rescinded pursuant to review

9.1 Where a review is requested under Part II of an order or finding of the Tribunal pursuant to which duty is leviable, collectable and payable (in this

Section referred to as "payable") under this Act on goods of the United States imported into Canada that are of the same description as any goods to which the order or finding applies, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of that description during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the order or finding being rescinded or being rescinded in relation to particular goods, in which case:

(a) duty ceases, on the order or finding being so rescinded, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and

(b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).

Duty ceases where final determination set aside by court

9.2 (1) Where duty is leviable, collectable and payable (in this Section referred to as "payable") under this Act pursuant to an order or finding of the Tribunal on goods imported into Canada and proceedings are commenced in the Federal court of Appeal by an application under Section 96.1 to review and set aside the final determination of the Deputy Minister under paragraph 41(1)(a) on which the order or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of the proceedings, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the final determination being set aside or being set aside in relation to particular goods, or the Deputy Minister recommencing the investigation and terminating it under paragraph 41(1)(b), in which case:

(a)duty ceases, on the final determination being so set aside or the investigation being so terminated, to be so payable on imported goods of that description or the same description as those particular goods, as the case may be; and

(b)for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of goods described in paragraph (a).

Definition of "proceedings"

(2) In Subsection (1), "proceedings", in relation to an application made to the Federal Court of Appeal, includes proceedings on any appeal from any decision of that Court on the application.

Duty ceases where investigation terminated pursuant to review

9.21 (1) Where duty is leviable, collectable and payable (in this Section referred to as "payable") under this Act pursuant to an order or finding of the Tribunal on goods of a NAFTA country imported into Canada and a review is requested under Part I.1 of the final determination of the Deputy Minister under paragraph 41(1)(a) on which the order or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the Deputy Minister recommencing the investigation and terminating it under paragraph 41(1)(b), in which case:

(a)duty ceases, on the investigation being so terminated, to be so payable on imported goods of that description; and

(b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of imported goods of that description.

Suspension of S. 9.3

(2) The operation of Section 9.3 is suspended during the period in which Subsection (1) is in force.

Duty ceases where investigation terminated pursuant to review

9.3 Where duty is leviable, collectable and payable (in this Section referred to as "payable") under this Act pursuant to an order or finding of the Tribunal on goods of the United States imported into Canada and a review is requested under Part II of the final determination of the Deputy Minister under paragraph 41(1)(a) on which the order or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of proceedings under that Part, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the Deputy Minister recommencing the investigation and terminating it under paragraph 41(1) (b), in which case:

(a) duty ceases, on the investigation being so terminated, to be so payable on imported goods of that description; and

(b) for greater certainty, the order or finding shall, for the purposes of this Act, be deemed never to have been made by the Tribunal in respect of imported goods of that description.

Duty reimposed on referral back

9.4 (1) Where an order or finding of the Tribunal under Subsection 76(4) rescinding an order or finding described in any of Sections 3 to 6 is referred

back to the Tribunal under Subsection 77.015(3) or (4) or 77.019(5), or under Subsection 77.15(3) or (4) or 77.19(4), the importer of dumped or subsidized goods that are of the same description as any goods to which the rescinded order or finding applied and that are released on or after the day on which the order of the panel referring the rescinding order or finding back is made, shall pay or cause to be paid duty on the imported goods as if the rescinded order or finding had not been rescinded.

Cessation of duty

(2) Duty that is payable under Subsection (1) continues to be so payable during the course of the proceedings of the Tribunal on the referral back and thereafter, unless the order or finding of the Tribunal on the referral back is:

(a) to confirm the rescinding order or finding, in which case:

(i) the duty ceases, on the day on which the order or finding of the Tribunal on the referral back is made, to be so payable on imported goods, and

(ii) the duty paid under Subsection (1) shall be returned to the importer forthwith after that day; or

(b) to rescind the rescinding order or finding and make a new or other order or finding with respect to the goods to which the rescinded order or finding applied, in which case the duty paid under Subsection (1) shall be returned to the importer forthwith after the day on which the order or finding of the Tribunal on the referral back is made, except to the extent of any duty payable by the importer as a consequence of the new or other order or finding.

Where Tribunal makes new order or finding

(3) Where the Tribunal rescinds a rescinding order or finding and makes a new or other order or finding as described in paragraph (2)(b), the new or

other order or finding shall be deemed, for the purposes of this Act, to have been made on the day on which the order or finding so rescinded was made.

General Rules Relating to Payment of Duty

Where both anti-dumping duty and countervailing duty payable on goods

10. Where both an anti-dumping duty and a countervailing duty are required by this Act to be levied, collected and paid on any goods imported into Canada and all or any portion of the margin of dumping of the goods is' in the opinion of the Deputy Minister, attributable to an export subsidy in respect of which a countervailing duty is required by any of Sections 3, 4, 6 and 7 to be levied, collected and paid, the anti-dumping duty is, notwithstanding Sections 3 to 5, leviable, collectable and payable under this Act in respect of the goods only as follows:

(a)where the whole of the margin of dumping of the goods is, in the opinion of the Deputy Minister, attributable to the export subsidy, no anti-dumping duty is leviable, collectable or payable on the imported goods; and

(b)where a portion only of the margin of dumping of the imported goods is, in the opinion of the Deputy Minister, attributable to the export subsidy, an anti-dumping duty is leviable, collectable and payable on the imported goods only in an amount equal to that portion of the margin of dumping of the goods that is not, in the opinion of the Deputy Minister, attributable to the export subsidy.

When duty payable

11. (1) The importer in Canada of any goods imported into Canada in respect of which duty, other than provisional duty, is payable shall, on demand of the Deputy Minister and notwithstanding any security posted pursuant to paragraph 8(1)(d) or Subsection 13.2(4), pay or cause to be paid all such duties on the goods.

(2) Any person who fails to pay any amount owing under Subsection (1) shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing 30 days after the Deputy Minister makes a demand under Subsection (1) during which any amount remains outstanding, calculated on the amount outstanding.

Amounts under ten dollars

(3) Where interest owing under this Section is less than ten dollars, no interest shall be paid.

Return of duty where order or finding set aside or rescinded

12. (1) Where, pursuant to an application for judicial review under the Federal Court Act or Section 96.1 of this Act or a review under Part I.1 or II of this Act, an order or finding described in any of Sections 3 to 6 is set aside or rescinded or is set aside or rescinded in relation to particular goods, and where all proceedings under this Act respecting the dumping or subsidizing of all or any of the goods to which the order or finding applies or all or any of those particular goods, as the case may be, are subsequently terminated as described in Section 47, any duty paid under this Act pursuant to the order or finding by or on behalf of an importer on imported goods that are of the same description as goods with respect to which such proceedings are so terminated shall be returned to the importer forthwith after the proceedings are so terminated.

Return of part of duty where order or finding set aside or rescinded

(1.1) Where, pursuant to an application under the Federal Court Act or Section 96.1 of this Act or a review under Part I.1 or II of this Act, an order or finding described in any of Sections 3 to 6 is set aside or rescinded or is set aside or rescinded in relation to particular goods and another such order or finding is made with respect to all or any of the goods to which the order or finding applies or all or any of those particular goods, as the case may be,

any duty paid under this Act pursuant to the first-mentioned order or finding by or on behalf of an importer shall, except to the extent of any duty payable by the importer as a consequence of the other order or finding, be returned to the importer forthwith after the other order or finding is made.

Return of duty

(2) Where the Minister is satisfied that, because of a clerical or arithmetical error, an amount has been paid as duty in respect of goods that was not properly payable, the Minister shall return that amount to the importer or owner of the goods by or on whose behalf it was paid.

Idem

(3) Where, in relation to the importation of any goods and as a consequence of the operation of any provision of this Act, duty is paid or security posted by or on behalf of a person who, at the time the duty is paid or security posted, is considered by the Deputy Minister to be the importer in Canada of the goods and it is subsequently ruled by the Tribunal that the person was not the importer in Canada of the goods, the duty so paid or security so posted shall be returned to the person forthwith after the Tribunal's ruling is made.

Where Tribunal makes new order or finding

13. Where, pursuant to Subsection 91(3), the Tribunal rescinds an order or finding with respect to goods and makes another order or finding with respect to the goods:

(a) the other order or finding shall be deemed, for the purposes of this Act, to have been made on the date that the order or finding so rescinded was made; and

(b) any duty paid by or on behalf of any person as a consequence of the order or finding so rescinded shall, except to the extent of any duty payable

by the person as a consequence of the other order or finding, be returned to the person forthwith after the other order or finding is in fact made.

Interest on amount of duty returned

13.1 (1) Any person to whom any amount of duty paid is returned under Section 9.4, 12 or 13 shall be paid, in addition to the amount returned, interest thereon at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the duty was paid and the time the amount is returned.

Amounts under ten dollars

(2) Where interest owing under this Section is less than ten dollars, no interest shall be paid.

Expedited Review of Normal Value, Export Price or Amount of Subsidy

Request for review

13.2 (1) An exporter to Canada of any goods to which an order or finding referred to in Section 3 applies may request that the Deputy Minister review the normal value, export price or amount of subsidy in relation to those goods where:

(a) the exporter establishes that the exporter is not associated with any other exporter from that country of goods to which the order or finding relates; and

(b) the exporter has not:

(i) been given notice under subparagraph 34(1)(a)(i), paragraph 38(3)(a) or Subsection 41(3) in respect of the goods, or

(ii) been requested to provide information in relation to those goods or in relation to any goods that are of the same description as those goods for the purposes of this Act.

Form of request

(2) A request under Subsection (1) shall be made in the prescribed manner and form and shall contain the prescribed information.

Review

(3) Where the Deputy Minister receives a request under Subsection (1), the Deputy Minister shall initiate a review, on an expedited basis, of the normal value, export price or amount of subsidy, as the case may be, and shall, on completion of the review, either confirm or amend the value, price or amount.

Posting of security

(4) An importer of goods that are of the same description as any goods to which a review under Subsection (3) applies and that are released during the period beginning on the day the review is initiated and ending on the day on which the Deputy Minister completes the review shall, on demand of the Deputy Minister for payment of duty, post, or cause to be posted, security in the prescribed manner and form and in an amount, or of a value, equal to the margin of dumping of, or amount of subsidy on, the goods.

Confirmation, etc., deemed to be a determination

(5) A confirmation or amendment of a normal value, export price or amount of subsidy under Subsection (3) shall, for the purposes of Subsection 56(1), be deemed to be a determination of a normal value, export price or amount of subsidy, as the case may be, by a customs officer referred to in that Subsection.

Exemption from Application of Act

Exemption of goods from application of Act

14. The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act.

NORMAL VALUE, EXPORT PRICE, MARGIN OF DUMPING AND AMOUNT OF SUBSIDY

Normal Value

Determination of normal value of goods

15. Subject to Sections 19 and 20, where goods are sold to an importer in Canada, the normal value of the goods is the price of like goods when they are sold by the exporter of the first-mentioned goods:

(a) to purchasers:

(i) with whom the exporter is not associated at the time of the sale of the like goods, and

(ii) who are at the same or substantially the same trade level as the importer,

(b) in the same or substantially the same quantities as the sale of goods to the importer,

(c) in the ordinary course of trade for use in the country of export under Competitive conditions,

(d) during such period of 60 days that ends in the interval commencing with the first day of the year preceding the date of the sale of the goods to the

importer and ending on the fifty-ninth day after such date as is selected by the Deputy Minister or, where, in the opinion of the Deputy Minister, the nature of the trade in those goods or the fact that they are sold to the importer for future delivery requires that sales of like goods by the exporter during a period other than a period of 60 days that ends in that interval be taken into account, during such period of 60 days or longer:

(i) that precedes the date of the sale of the goods to the importer, or

(ii) where the goods are sold to the importer for future delivery, that precedes the date of the sale of the goods to the importer or within the year that precedes the date of the delivery of the goods to the importer

as the Deputy Minister specifies for those goods or for goods of the class to which those goods belong, and

(e) at the place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped directly to Canada under normal conditions of trade,

adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter.

Rules applied in determining normal value

16. (1) In the application of Section 15 in the case of any goods:

(a) if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter at the place described in paragraph 15(e) as to permit a proper comparison with the sale of the goods to the importer in Canada, but sales of like goods were made by the exporter at one other place or several other places in the country of export, there shall,

for the purpose of making that comparison, be included with sales of like goods made by the exporter at the place described in paragraph 15(e) sales of like goods made by the exporter at that one other place or at the nearest of the several other places to the place described in paragraph 15(e), as the case may be;

(b)if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter to purchasers described in subparagraph 15(a)(i) who are at the same or substantially the same trade level as the importer in Canada as to permit a proper comparison with the sale of goods to the importer, but there was such a number of sales of like goods made to purchasers described in subparagraph 15(a)(i) who are at the trade level nearest and subsequent to that of the importer, there shall be substituted for the purchasers described in paragraph 15(a) purchasers described in subparagraph 15(a)(i) who are at the trade level nearest and subsequent to that of the importer;

(c) if by reason of the fact that:

(i)the sales of like goods made by the exporter were solely or primarily for export, or

(ii)the sales of like goods made by the exporter during the period that is applicable by reason of paragraph 15(d) were solely or primarily to purchasers who at any time during that period were not purchasers described in subparagraph 15(a)(i),

there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter as to permit a proper comparison with the sale of the goods to the importer in Canada, but there were sales of like goods for use in the country of export by other vendors, such one or more of any of those vendors that the Deputy Minister may specify shall be deemed to be the exporter for the purpose of determining the normal value of the goods sold to the importer in Canada;

(d)if the quantity of goods sold to the importer in Canada is larger than the largest quantity of like goods sold by the exporter for use in the country of export, the sales of like goods shall be those sales of like goods that are in the largest quantity sold by the exporter for such use; and

(e)if the quantity of goods sold to the importer in Canada is smaller than the smallest quantity of like goods sold by the exporter for use in the country of export, the sales of like goods shall be those sales of like goods that are in the smallest quantity sold by the exporter for such use.

Idem

(2) In determining the normal value of any goods under Section 15, there shall not be taken into account:

(a)any sale of like goods for use in the country of export by a vendor to a purchaser if the vendor did not, at the same or substantially the same time, sell like goods in the ordinary course of trade to other persons in the country of export at the same trade level as, and not associated with, the purchaser; and

(b)any sale of like goods by the exporter within a period, determined by the Deputy Minister, of not less than six months, where:

(i) the sale is made at a price that is less than the cost of the goods,

(ii) either:

(A)the sale is of a volume that, or is one of a number of sales referred to in subparagraph (i) the total volume of which, is not less than twenty per cent of the total volume of like goods sold during that period, or

(B)the average selling price of like goods sold by the exporter during that period is less than the average cost of those like goods, and

(iii) the sale is made at a price per unit that is not greater than the average cost of all like goods sold during that period.

Meaning of "cost"

(3) For the purposes of paragraph (2)(b), "cost" means, in relation to goods, the cost of production of the goods and the administrative, selling and all other costs with respect to the goods.

Price of like goods

17. In determining the normal value of any goods under Section 15, the price of like goods when sold by the exporter to purchasers during the period referred to in paragraph 15 (d) in a sale or sales that comply with the terms and conditions referred to in Section 15 or with those terms and conditions that apply by virtue of Subsection 16(1) is, at the option of the Deputy Minister in any case or class of cases, 'except a case or class of cases to which Subsection 30.2(3) applies,

(a) the weighted average of the prices at which like goods were sold by the exporter to purchasers during that period; or

(b) the price at which like goods were sold by the exporter in any sale during that period where, in the opinion of the Deputy Minister, the price is representative of the prices at which like goods were sold during that period.

Goods deemed to be like goods

18. Where goods imported into Canada and goods sold for use in the country of export are like goods except only that the goods sold for such use have applied to them a trademark, as defined in the Trademarks Act, that is not applied to the goods imported into Canada, and goods like the goods imported are not sold for use in the country of export, the goods imported

and the goods sold for such use shall be deemed to be like goods for the purposes of this section if, in the opinion of the Deputy Minister:

(a) the goods are being imported into Canada without that trademark applied to them in order to avoid the operation of Section 15; and

(b) it is probable that there will be applied to the goods, subsequent to their importation into Canada, that trademark or any other mark so closely resembling that trademark that it is likely to be taken therefor.

Where normal value cannot be determined under Section 15

19. Subject to Section 20, where the normal value of any goods cannot be determined under Section 15 by reason that there was not, in the opinion of the Deputy Minister, such a number of sales of like goods that comply with all the terms and conditions referred to in that section or that are applicable by virtue of Subsection 16(1) as to permit a proper comparison with the sale of the goods to the importer, the normal value of the goods shall be determined, at the option of the Deputy Minister in any case or class of cases, as:

(a) such price of like goods when sold by the exporter to importers in any country other than Canada during the period referred to in paragraph 15(d) as, in the opinion of the Deputy Minister, fairly reflects the market value of the goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by the exporter to importers in the country other than Canada; or

(b) the aggregate of:

(i) the cost of production of the goods,

(ii) a reasonable amount for administrative, selling and all other costs, and

(iii) a reasonable amount for profits.

Normal value where export monopoly

20. Where goods sold to an importer in Canada are shipped directly to Canada from a country where, in the opinion of the Deputy Minister:

(a) the government of that country has a monopoly or substantial monopoly of its export trade, and

(b) domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market,

the normal value of the goods is

(c) where like goods are sold by producers in any country other than Canada designated by the Deputy Minister for use in that country:

(i) the price of the like goods at the time of the sale of the goods to the importer in Canada, adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer in Canada and the like goods sold by producers in the country other than Canada designated by the Deputy Minister for use in that country, or

(ii) the aggregate of:

(A) the cost of production of the like goods,

(B) a reasonable amount for administrative, selling and all other costs, and

(C)a reasonable amount for profits,

whichever of the price or aggregate the Deputy Minister designates for any case or class of cases; or

(d)where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the normal value of the goods to be determined as provided in paragraph (c), the price of like goods:

(i)produced in any country designated by the Deputy Minister, other than Canada or the country from which the goods were shipped directly to Canada, and

(ii)imported into Canada and sold by the importer thereof in the condition in which they were imported to a person with whom, at the time of the sale, the importer was not associated,

such price to be adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the imported like sale by the importer thereof.

Credit sales of like goods

21. (1) Where any sale of like goods referred to in Section 17, paragraph 19(a), subparagraph 20(c)(i) or paragraph 20(d) was made on credit terms other than cash discounts, the price for which the like goods were sold is deemed, for the purpose of that provision, to be an amount equal to the quotient obtained when:

(a)the aggregate of the present value of every payment of principal or interest, or of principal and interest, provided for by any agreement entered into with respect to the sale, determined:

(i) as of the time of the sale, and

(ii) by reference to a discount rate equal to:

(A) the interest rate prevailing in the country in which the goods were sold, at the time of the sale, for commercial loans available in that country in the currency in which the payments are expressed in the agreement and on terms, other than the interest rate, comparable to the credit terms on which the sale of the like goods was made, or

(B) where it is not possible to ascertain the interest rate referred to in Clause (A) or there is no such interest rate, the interest rate selected as provided for by regulations made pursuant to paragraph 97(i) ,

is divided by

(b) the number or quantity of the like goods sold,

so as to arrive at a unit price for the like goods sold.

Where agreement relates to several goods

(2) For the purpose of paragraph (1)(a), where an agreement with respect to the sale of like goods also relates to the sale of other goods, only such portion of the present value of any payment of principal or interest, or of principal and interest, provided for by the agreement as is reasonably attributable to the like goods shall be included in determining the aggregate referred to in that paragraph.

Purchasers to be regarded as one

22. For the purpose of Section 15, where two or more purchasers are persons associated with each other during the period that, by reason of the

operation of paragraph 15(d), is relevant for the purpose of that Section, those purchasers shall be regarded as a single purchaser. 1984, C. 25, S. 22.

Where exporter provides benefit on resale in country of export

23. Where, by reason of any provision of Sections 17, 19 or 20, the normal value of goods sold to an importer in Canada is required to be determined by reference to the price of like goods sold by the exporter of the first mentioned goods and the exporter agrees with persons who purchase the like goods from him in the country of export of the goods sold to the importer in Canada to provide, directly or indirectly, to persons who purchase the like goods in the country of export:

(a) on resale from the persons with whom such an agreement is made, or

(b) from any person on any subsequent resale,

any benefit by way of rebate, service, other goods or otherwise, the normal value for the purposes of this Act of the goods sold to the importer in Canada is the normal value as determined pursuant to that provision minus an amount to reflect the value of the benefit to persons who purchase the like goods on resale.

Costs during start-up period

23.1 Where, in calculating the normal value of any goods, the investigation period includes a start-up period of production, the cost of production of the goods and the administrative, selling and all other costs with respect to the goods for that start-up period of production shall be determined in the prescribed manner.

Export Price

Determination of export price of goods

24. The export price of goods sold to an importer in Canada, notwithstanding any invoice or affidavit to the contrary, is an amount equal to the lesser of:

(a) the exporter's sale price for the goods, adjusted by deducting therefrom:

(i) the costs, charges and expenses incurred in preparing the goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales of like goods for use in the country of export,

(ii) any duty or tax imposed on the goods by or pursuant to a law of Canada or of a province, to the extent that the duty or tax is paid by or on behalf or at the request of the exporter, and

(iii) all other costs, charges and expenses resulting from the exportation of the goods, or arising from their shipment, from the place described in paragraph 15(e) or the place substituted therefor by virtue of paragraph 16(1)(a), and

(b) the price at which the importer has purchased or agreed to purchase the goods, adjusted by deducting therefrom all costs, charges, expenses, duties and taxes described in subparagraphs (a)(i) to (iii).

Special rules to determine export price

25. (1) Where, in respect of goods sold to an importer in Canada:

(a) there is no exporter's sale price or no price at which the importer in Canada has purchased or agreed to purchase the goods, or

(b) the Deputy Minister is of the opinion that the export price, as determined under Section 24, is unreliable:

(i) by reason that the sale of the goods for export to Canada was a sale between associated persons, or

(ii) by reason of a compensatory arrangement, made between any two or more of the following, namely, the manufacturer, producer, vendor, exporter, importer in Canada, subsequent purchaser and any other person, that directly or indirectly affects or relates to:

(A) the price of the goods,

(B) the sale of the goods,

(C) the net return to the manufacturer, producer, vendor or exporter of the goods, or

(D) the net cost to the importer of the goods,

the export price of the goods is

(c) if the goods were sold by the importer in the condition in which they were or are to be imported to a person with whom, at the time of the sale, he was not associated, the price for which the goods were so sold less an amount equal to the aggregate of:

(i) all costs, including duties imposed by virtue of this Act or the Customs Tariff and taxes:

(A) incurred on or after the importation of the goods and on or before their sale by the importer, or

(B) resulting from their sale by the importer,

(ii) an amount for profit by the importer on the sale,

(iii)the costs, charges and expenses incurred by the exporter importer or any other person in preparing the goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales of like goods for use in the country of export, and

(iv)all other costs, charges and expenses incurred by the exporter, importer or any other person resulting from the exportation of the imported goods, or arising from their shipment, from the place described in paragraph 15(e) or the place substituted therefor by virtue of paragraph 16(1)(a),

(d)if the goods are imported for the purpose of assembly, packaging or other further manufacture in Canada or for incorporation into other goods in the course of manufacture or production in Canada, the price of the goods as assembled, packaged or otherwise further manufactured, or of the goods into which the imported goods have been incorporated, when sold to a person with whom the vendor is not associated at the time of the sale, less an amount equal to the aggregate of:

(i)an amount for profit on the sale of the assembled, packaged or otherwise further manufactured goods or of the goods into which the imported goods have been incorporated,

(ii)the administrative, selling and all other costs incurred in selling the goods described in subparagraph (i),

(iii)the costs that are attributable or in any manner related to the assembly, packaging or other further manufacture or to the manufacture or production of the goods into which the imported goods have been incorporated,

(iv)the costs, charges and expenses incurred by the exporter, importer or any other person in preparing the imported goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales of like goods for use in the country of export, and

(v) all other costs, charges and expenses, including duties imposed by virtue of this Act or the Customs Tariff and taxes:

(A) resulting from the exportation of the imported goods, or arising from their shipment, from the place described in paragraph 15(e) or the place substituted therefor by virtue of paragraph 16(1)(a) that are incurred by the exporter, importer or any other person, or

(B) incurred on or after the importation of the imported goods and an or before the sale of the goods as assembled, packaged or otherwise further manufactured or of the goods into which the imported goods have been incorporated, or

(e) in any cases not provided for by paragraphs (c) and (d), the price determined in such manner as the Minister specifies.

No deduction

(2) No deduction for duties imposed by virtue of this Act may be made under

(a) subparagraph (1)(c)(i), in the case of an export price determined under paragraph (1)(c), or

(b) subparagraph (1)(d)(v), in the case of an export price determined under paragraph (1)(d),

where, in the opinion of the Deputy Minister, the export price determined under either of those paragraphs without making such a deduction is equal to or greater than the normal value of the goods.

Export price where agreement affects anti-dumping duty

26. Where the manufacturer, producer, vendor or exporter of goods sold to an importer in Canada undertakes, directly or indirectly in any manner

whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the anti-dumping duty that may be levied on the goods:

(a) the indemnity, payment or reimbursement is deemed not to be a compensatory arrangement referred to in subparagraph 25(b)(ii) and

(b) the export price of the goods is the export price thereof as otherwise determined under this Act minus the amount of the indemnity, payment or reimbursement.

Credit sales of goods sold to importer in Canada

27. (1) For the purposes of Sections 24 and 25, where any sale of goods referred to in those Sections was made on credit terms other than cash discounts, the sale price for the goods is deemed to be an amount equal to the quotient obtained when:

(a) the aggregate of the present value of every payment of principal or interest, or of principal and interest, provided for by any agreement entered into with respect to the sale, determined:

(i) as of the time of the sale, and

(ii) by reference to a discount rate equal to:

(A) the interest rate prevailing, at the time of the sale, in the country in which the vendor is located for commercial loans available in that country in the currency in which the payments are expressed in the agreement and on terms, other than the interest rate, comparable to the credit terms on which the sale of the goods was made, or

(B) where it is not possible to ascertain the interest rate referred to in Clause (A) or there is no such interest rate, the interest rate selected as provided for by regulations made pursuant to paragraph 97(j),

is divided by

(b) the number or quantity of the goods sold,

so as to arrive at a unit price for the goods sold.

Where agreement relates to several goods

(2) For the purpose of paragraph (1)(a), where an agreement with respect to the sale of goods referred to in Section 24 or 25 also relates to the sale of other goods, only such portion of the present value of any payment of principal or interest, or of principal and interest, provided for by the agreement as is reasonably attributable to the goods referred to in Section 24 or 25, as the case may be, shall be included in determining the aggregate referred to in that paragraph.

Where exporter provides benefit on resale in Canada

28. For the purposes of Sections 24 and 25, where the exporter of goods sold to an importer in Canada agrees with the importer to provide, directly or indirectly, to persons who purchase the goods in Canada:

(a) on resale from the importer, or

(b) from any person on any subsequent resale,

any benefit by way of rebate, service, other goods or otherwise, the export price of the goods is the export price as otherwise determined under this Act, after subtracting therefrom any amount that is required to be subtracted under Section 26, minus an amount to reflect the value of the benefit to persons who purchase the goods on resale.

Normal Value and Export Price

Normal value and export price where information not available

29. (1) Where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of normal value or export price as provided in Sections 15 to 28, the normal value or export price, as the case may be, shall be determined in such manner as the Minister specifies.

Consignment shipments

(2) Where goods are or are to be shipped to Canada on consignment and there is no known purchaser in Canada of the goods, the normal value and export price of the goods shall be determined in such manner as the Minister specifies.

Normal value and export price where goods exported to Canada through another country

30. (1) Where goods are exported to Canada from one country but pass in transit through another country, the normal value and export price of the goods shall, subject to such terms and conditions as to shipment, documentation, warehousing, transshipment or the like as are prescribed, be determined as if the goods were shipped directly to Canada from the first-mentioned country.

Normal value and export price where goods shipped indirectly to Canada

(2) Where any goods:

(a) are or are to be shipped indirectly to Canada from the country of origin through one or more other countries, and

(b) would, but for this Section, have a normal value as computed under Sections 15 to 23 that is less than the normal value would be if the country of export were the country of origin,

the normal value and export price of the goods shall, notwithstanding any other provision of this Act, be determined as if the goods were or were to be shipped directly to Canada from the country of origin.

Margin of Dumping

Determination of margin of dumping in respect of a country

30.1 For the purposes of subparagraphs 35(1)(a)(ii), 38(1)(a)(i) and 41(1)(a)(ii) and paragraphs 41.1(1)(a) and 41.1(2)(a), the margin of dumping in relation to goods from a particular country is the weighted average of the margins of dumping determined in accordance with Section 30.2.

Margin of dumping re goods from an exporter

30.2 (1) Subject to Subsection (2), the margin of dumping in relation to any goods from a particular exporter is zero or the amount determined by subtracting the weighted average export price of the goods from the weighted average normal value of the goods, whichever is greater.

Where variation in price

(2) Where, in the opinion of the Deputy Minister, there are significant variations in the prices of goods from a particular exporter:

- (a) among purchasers,
- (b) among regions in Canada, or
- (c) among time periods,

the Deputy Minister may determine the margin of dumping in relation to any goods from that exporter to be the weighted average of the margins of

dumping in relation to the goods of that exporter that are sold in such individual sales of goods of that exporter as the Deputy Minister considers relevant.

Price of like goods

(3) Where Subsection (2) applies and any of the normal values used to determine the margins of dumping in relation to goods sold in individual sales are determined in accordance with Section 15, the price of like goods used to determine those normal values is the weighted average, determined in accordance with paragraph 17(a), of the prices at which the like goods were sold.

Margin of dumping based on sample

30.3 (1) The Deputy Minister may, where the Deputy Minister is of the opinion that it would be impracticable to determine a margin of dumping in relation to all goods under consideration because of the number of exporters, producers or importers, the variety or volume of goods or any other reason, determine margins of dumping in relation to:

(a) the largest percentage of goods from each of the countries whose goods are under consideration that, in the opinion of the Deputy Minister, can reasonably be investigated; or

(b) samples of the goods from each of the countries whose goods are under consideration that, in the opinion of the Deputy Minister based on the information available at the time of selection, are statistically valid.

Where information submitted

(2) Where Subsection (1) applies, the Deputy Minister shall determine a margin of dumping in relation to any goods under consideration that were not included in the percentage or sample, as the case may be, referred to in that subsection where:

(a)the exporter of the goods submits information for the purpose of determining a margin of dumping; and

(b)in the opinion of the Deputy Minister, it is practicable to do so.

Other cases

(3) Where Subsection (1) applies with respect to goods under consideration, the margin of dumping in relation to those goods that were not included in the percentage or sample and those goods for which a margin of dumping was not determined in accordance with Subsection (2) shall be determined in the prescribed manner.

Amount of Subsidy

Amount of Subsidy

30.4 (1) Subject to Subsections (2) and (3), the amount of subsidy in relation to any goods shall be determined in the prescribed manner.

Where no prescribed manner

(2) Where no manner of determining an amount of subsidy has been prescribed or, in the opinion of the Deputy Minister, sufficient information has not been provided or is not otherwise available to enable the determination of the amount of subsidy in the prescribed manner, the amount of subsidy shall, subject to Subsection (3), be determined in such manner as the Minister may specify.

Exception

(3) An amount of subsidy shall not include any amount that is attributable to a non-actionable subsidy.

PROCEDURE IN DUMPING AND SUBSIDY INVESTIGATIONS

Commencement of Investigation

Initiation of investigation

31. (1) The Deputy Minister shall cause an investigation to be initiated respecting the dumping or subsidizing of any goods and whether there is a reasonable indication that such dumping or subsidizing has caused injury or retardation or is threatening to cause injury, forthwith on the Deputy Minister's own initiative or, subject to Subsection (2), where the Deputy Minister receives a written complaint respecting the dumping or subsidizing of the goods, within 30 days after the date on which written notice is given by or on behalf of the Deputy Minister to the complainant that the complaint is properly documented, if the Deputy Minister is of the opinion that there is evidence:

(a) that the goods have been dumped or subsidized; and

(b) that discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury.

Standing

(2) No investigation may be initiated under Subsection (1) as a result of a complaint unless the complaint is supported by domestic producers whose production represents more than 50 per cent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint and the production of the domestic producers who support the complaint represents 25 per cent or more of the total production of like goods by the domestic industry.

Meaning of "domestic industry"

(3) In Subsection (2), domestic industry means, subject to Subsection 2(1.1), the domestic producers as a whole of the like goods except that, where a domestic producer is related to an exporter or importer of allegedly dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

Producers related to exporters or importers

(4) For the purposes of Subsection (3), a domestic producer is related to an exporter or an importer where:

(a) the producer either directly or indirectly controls, or is controlled by, the exporter or importer,

(b) the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person, or

(c) the producer and the exporter or the importer, as the case may be, directly or indirectly control a third person,

and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.

Where there is deemed to be control

(5) For the purposes of Subsection (4), a person is deemed to control another person where the first person is legally or operationally in a position to exercise restraint or direction over the other person.

Extension of 30-day period

(6) The period of 30 days referred to in Subsection (1) is extended to 45 days where, before the expiration of the 30 days, the Deputy Minister

causes written notice to be given to the complainant and to the government of the country of export that the period of 30 days is insufficient to determine whether there is compliance with either or both of the conditions referred to in Subsection (2) and Subsection 31.1(1).

Initiation of investigation

(7) The Deputy Minister may, on receipt of a notice in writing from the Tribunal pursuant to Section 46 respecting the dumping or subsidizing of any goods, cause an investigation to be initiated respecting the dumping or subsidizing of any goods described in the notice.

Initiation of investigation

(a) Where a reference is made to the Tribunal pursuant to Subsection 33(2) and the Tribunal advises that the evidence discloses a reasonable indication that the dumping or subsidizing of the goods that are the subject of the reference has caused injury or retardation or is threatening to cause injury, the Deputy Minister shall initiate an investigation respecting the dumping or subsidizing of the goods forthwith after receipt of the advice.

No investigation where subsidy notified

31.1 (1) Subject to Subsections (2) and (3), the Deputy Minister may not initiate an investigation with respect to a subsidy that has been notified to the Committee, in accordance with Article 8.3 of the Subsidies Agreement, as being a non-actionable subsidy.

Where determination that subsidy is actionable

(2) Subject to Subsection (3), the Deputy Minister may initiate an investigation with respect to a subsidy referred to in Subsection (1) where there is a determination that the subsidy is not a non-actionable subsidy by:

(a) the Committee, as the result of a review of the notification pursuant to a request under Article 8.4 of the Subsidies Agreement; or

(b) an arbitration body as a result of the submission to binding arbitration under Article 8.5 of the Subsidies Agreement of:

(i) a determination by the Committee that the subsidy is a non-actionable subsidy, or

(ii) the failure of the Committee to make a determination pursuant to a request under Article 8.4 of the Subsidies Agreement.

Where redetermination that subsidy is actionable

(3) The Deputy Minister may initiate an investigation with respect to a subsidy that was determined, by the Committee or an arbitration body, to be a non-actionable subsidy where the Committee or an arbitration body makes a redetermination that the subsidy is no longer a non-actionable subsidy.

Notification

(4) The Deputy Minister shall forthwith notify the Deputy Minister of Finance and the complainant where the Deputy Minister is of the opinion that:

(a) a subsidy that was not notified to the Committee in accordance with Article 8.3 of the Subsidies Agreement is a non-actionable subsidy; or

(b) a subsidy that was determined by the Committee or an arbitration body to be a non-actionable subsidy may, as a result of substantial modification to the nature or delivery of the subsidy, no longer be a non-actionable subsidy.

Where Deputy Minister of Finance receives notification

(5) The Deputy Minister of Finance shall, on receipt of notification under Subsection (4), notify the Deputy Minister of International Trade and any other person who, in the opinion of the Deputy Minister of Finance, is interested, of the matters referred to in paragraphs (4) (a) and (b) .

Where Deputy Minister receives a complaint

32. (1) Where the Deputy Minister receives a written complaint respecting the dumping or subsidizing of goods, he shall, within 21 days after the receipt thereof:

(a) where the complaint is properly documented, cause the complainant and the government of the country of export to be informed in writing that the complaint was received and that it is properly documented; or

(b) where the complaint is not properly documented, cause the complainant to be informed that the complaint was received and that additional information and material is needed in order for the complaint to be properly documented.

Additional information and material

(2) For the purposes of Subsection (1), where the Deputy Minister receives from a complainant additional written information or material in relation to a complaint referred to in that subsection with respect to which he has at any time caused the complainant to be informed pursuant to paragraph (1) (b) , the Deputy Minister shall, unless, before the receipt of the additional information or material, he has caused the complainant to be informed in writing pursuant to paragraph (1)(a) that the complaint is properly documented, be deemed to have received, on the day that he received the additional written information or material, a complaint respecting the dumping or subsidizing of goods composed of the complaint with respect to which he has caused the complainant to be so informed pursuant to paragraph (1)(b) and the additional information or material.

Deemed complaint

(3) Where a written complaint filed with the Tribunal pursuant to Subsection 23(1) of the Canadian International Trade Tribunal Act is referred to the Deputy Minister pursuant to Subsection 26(5) or 28(1) of that Act, the Deputy Minister shall be deemed to have received a written complaint described in Subsection (1).

Where Deputy Minister decides not to initiate investigation

33. (1) Where, after receipt of a properly documented complaint respecting the dumping or subsidizing of goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated, the Deputy Minister shall cause a written notice of the decision, setting out the reasons therefor, to be sent to the complainant and to the government of the country of export.

Reference to Tribunal

(2) Where, after receipt of a properly documented complaint respecting the dumping or subsidizing of goods, the Deputy Minister decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated by reason only that in the opinion of the Deputy Minister the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has so decided has caused injury or retardation or is threatening to cause injury:

(a) the Deputy Minister may, on the date of the notice referred to in Subsection (1), or

(b) the complainant may, within thirty days after the date of the notice referred to in Subsection (1),

refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has so decided has caused injury or retardation or is threatening to cause injury.

Notice of investigation and referral to Tribunal

34. (1) Where the Deputy Minister causes an investigation to be initiated respecting the dumping or subsidizing of goods:

(a) in the case of an investigation initiated pursuant to any provision of this Act other than Section 7, the Deputy Minister shall cause notice of the investigation:

(i) to be given to the exporter, the importer, the government of the country of export, the complainant, if any, and such other persons as may be prescribed, and

(ii) to be published in the Canada Gazette; and

(b) in the case of an investigation initiated pursuant to Subsection 31(1), the Deputy Minister may, on the date of the notice given to the complainant pursuant to paragraph (a), or any person or government that was given notice pursuant to paragraph (a) may, within 30 days from the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of any goods in respect of which the Deputy Minister has caused the investigation to be initiated has caused injury or retardation or is threatening to cause injury.

Finding of Tribunal

(2) Where, pursuant to a reference under paragraph (1)(b), the Tribunal advises the Deputy Minister in writing that the evidence discloses a reasonable indication that the dumping or subsidizing of the goods has

caused injury or retardation or is threatening to cause injury, the Deputy Minister shall continue the investigation.

Termination of investigation

35. (1) Where, at any time before making a preliminary determination under Subsection 38(1) in respect of goods imported from a country or countries:

(a) the Deputy Minister is satisfied in respect of some or all of those goods that:

(i) there is insufficient evidence of dumping or subsidizing to justify proceeding with the investigation,

(ii) the margin of dumping of, or the amount of subsidy on, the goods from that country or from any of those countries is insignificant, or

(iii) the actual or potential volume of dumped or subsidized goods is negligible, or

(b) the Deputy Minister comes to the conclusion in respect of some or all of those goods that the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury,

the Deputy Minister shall, subject to Subsections (2) and (3),

(c) cause the investigation to be terminated with respect to the goods in respect of which he is so satisfied or has come to that conclusion, and

(d) cause notice of the termination to be given and published as provided in paragraph 34(1)(a).

Notice and reference to Tribunal prior to termination

(2) Where, in the case of an investigation described in paragraph (1)(b) respecting the dumping or subsidizing of goods, the Deputy Minister comes to the conclusion referred to in that paragraph in respect of some or all of those goods:

(a) the Deputy Minister shall cause notice of the conclusion to be given and published as provided in paragraph 34(1)(a); and

(b) the Deputy Minister, on the date of the notice given to the complainant pursuant to paragraph (a), or any person or government that was given notice pursuant to paragraph (a) may, within 30 days after the date of the notice, refer to the Tribunal the question whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods in respect of which the Deputy Minister has come to that conclusion has caused injury or retardation or is threatening to cause injury.

Limitation on termination

(3) Where notice is given pursuant to paragraph (2)(a) in an investigation, the Deputy Minister may not terminate the investigation with respect to the goods to which the notice relates by reason only that the Deputy Minister has come to the conclusion referred to in paragraph (1)(b) in respect of those goods:

(a) where no reference is made to the Tribunal pursuant to paragraph (2)(b) within the 30 days referred to in that paragraph, until the 30 days have expired; or

(b) where a reference is made to the Tribunal, unless and until the Tribunal advises that in its opinion the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.

Termination of investigation

36. Where a reference is made to the Tribunal pursuant to paragraph 34(1) (b) and the Tribunal advises with respect to any of the goods that are the subject of the reference that the evidence does not disclose a reasonable indication that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury, the Deputy Minister shall terminate the investigation in respect of those goods forthwith after receipt of the advice and shall cause notice of the termination to be given and published as provided in paragraph 34(1)(a).

Tribunal to give advice

37. Where a reference is made to the Tribunal pursuant to Section 33, 34 or 35 on any question in relation to any matter before the Deputy Minister,

(a) the Deputy Minister shall forthwith provide the Tribunal with such information and material with respect to the matter as may be required under the rules of the Tribunal; and

(b) the Tribunal shall render its advice on the question:

(i) without holding any hearings thereon,

(ii) on the basis of the information that was before the Deputy Minister when he reached his decision or conclusion on that question, and

(iii) forthwith after the date on which the reference is made to it and, in any event, not later than 30 days after that date.

Preliminary Determination

Preliminary determination of dumping or subsidizing and of injury, etc.

38. (1) Subject to Sections 39 and 40, after the fifty-ninth day and on or before the ninetieth day following the initiation of an investigation under Section 31, the Deputy Minister shall make a preliminary determination of

dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated pursuant to Section 35 or 36 and that there is evidence that discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause injury after estimating and specifying, in relation to each exporter of goods in respect of which the investigation is made, as follows:

(a) in the case of dumped goods,

(i) estimating the margin of dumping of the goods to which the preliminary determination applies, using the information available to him at the time the estimate is made, and

(ii) specifying the goods to which the preliminary determination applies;

(b) in the case of subsidized goods,

(i) estimating the amount of subsidy on the goods to which the preliminary determination applies, using the information available to him at the time the estimate is made,

(ii) specifying the goods to which the preliminary determination applies, and

(iii) subject to Subsection (2), where the whole or any part of the subsidy on the goods to which the preliminary determination applies is a prohibited subsidy, specifying that there is a prohibited subsidy on the goods and estimating the amount of the prohibited subsidy thereon; and

(c) in the case of dumped or subsidized goods, specifying the name of the person he believes, on the information available to him at the time he makes the estimate referred to in paragraph (a)(i) or (b)(i), as the case may be, is the importer in Canada of the goods.

Exception

(2) The Deputy Minister shall not specify or estimate anything pursuant to subparagraph (1)(b)(iii) where the Deputy Minister is of the opinion that, having regard to the country that is providing the export subsidy, the nature of the goods on which there is an export subsidy and the circumstances under which the export subsidy is provided, provision of the export subsidy in relation to those goods is not inconsistent with that country's obligations under the international agreement known as the General Agreement on Tariffs and Trade, 1994.

Notice of preliminary determination

(3) Where the Deputy Minister makes a preliminary determination under Subsection (1), the Deputy Minister shall:

(a) cause notice of the determination to be given and published as provided in paragraph 34(1)(a); and

(b) cause to be filed with the Secretary written notice of the determination, stating the reasons therefor, together with such other material relating to the determination as may be required under the rules of the Tribunal.

Time extended

39. (1) Subject to Section 40, where, in any investigation respecting the dumping or subsidizing of goods, the Deputy Minister, before the expiration of the 90 days referred to in Subsection 38(1), causes written notice to be given to the persons and the government referred to in paragraph 34(1)(a) that by reason of:

(a) the complexity or novelty of the issues presented by the investigation,

(b) the variety of goods or number of persons involved in the investigation,

(c) the difficulty of obtaining satisfactory evidence in the investigation, or

(d) any other circumstance specified in the notice that, in the opinion of the Deputy Minister, makes it unusually difficult for him to decide within those 90 days whether to terminate the investigation with respect to some or all of the goods, proceed in accordance with Subsection 38(1) or accept an undertaking or undertakings,

the decision referred to in paragraph (d) will not be made within those ninety days, the period of 90 days referred to in Section 38 is thereupon extended to 135 days.

Notice of time extension

(2) Where the Deputy Minister causes notice to be given pursuant to Subsection (1), he shall cause a notice to the same effect to be published in the Canada Gazette forthwith.

Days not counted

40. Where, in any investigation respecting the dumping or subsidizing of goods, notice is given and published pursuant to paragraph 35(2)(a), there shall not be counted as one of the 90 days referred to in Section 38 or as one of the 135 days referred to in Subsection 39(1)

(a) in any case where the question referred to in that paragraph is not referred to the Tribunal, any of the 30 days referred to in paragraph 35(2)(b); or

(b) in any other case, any day in the period commencing on the day following the date of the notice given pursuant to paragraph 35(2)(a) and ending on the day on which the Tribunal renders its advice on the question referred to in paragraph 35(2)(b).

Final Determination

Final determination or termination

41. (1) Within 90 days after making a preliminary determination under Subsection 38(1) in respect of goods imported from a country or countries, the Deputy Minister shall:

(a) where, on the available evidence, the Deputy Minister is satisfied, in relation to the goods from that country or countries in respect of which the investigation is made, that:

(i) the goods have been dumped or subsidized,

(ii) the margin of dumping of, or the amount of subsidy on, the goods from that country or from any of those countries is not insignificant, and

(ii.1) either the actual or potential volume of dumped or subsidized goods is not negligible,

make a final determination of dumping or subsidizing with respect to the goods after specifying, in relation to each exporter of goods from that country or countries in respect of which the investigation is made as follows:

(iii) in the case of dumped goods, specifying the goods to which the determination applies and the margin of dumping of the goods, and

(iv) in the case of subsidized goods:

(A) specifying the goods to which the determination applies,

(B) specifying the amount of subsidy on the goods, and

(C) subject to Subsection (2), where the whole or any part of the subsidy on the goods is a prohibited subsidy, specifying the amount of the prohibited subsidy on the goods; or

(b)where, on the available evidence, there is no exporter described in paragraph (a) with respect to whom the Deputy Minister is satisfied in accordance with that paragraph, cause the investigation to be terminated with respect to the goods.

Exception

(2) The Deputy Minister shall not specify anything pursuant to Clause (1)(a) (iv)(C) where he is of the opinion that, having regard to the country that is providing the export subsidy, the nature of the goods and the circumstances under which the export subsidy is provided, provision of the export subsidy in relation to those goods is not inconsistent with that country's obligations under the international agreement known as the General Agreement on Tariffs and Trade.

Notice of final determination

(3) Where the Deputy Minister makes a final determination of dumping or subsidizing in respect of goods, he shall cause notice that he has made the determination to be:

(a) given and published as provided in paragraph 34(1)(a); and

(b) filed with the Secretary in writing, stating the reasons therefor, together with such other material relating to the determination as may be required under the rules of the Tribunal.

Notice of termination

(4) Where the Deputy Minister causes an investigation respecting the dumping or subsidizing of any goods to be terminated pursuant to Subsection (1) in respect of those goods, he shall cause notice of the termination to be:

(a) given and published as provided in paragraph 34(1)(a); and

(b) given in writing to the Secretary.

Action on final determination or decision referred back by court

41.1 (1) Where a final determination under paragraph 41(1)(a) or a decision under paragraph 41(1)(b) is set aside and the matter referred back to the Deputy Minister on an application under Section 96.1, the Deputy Minister shall:

(a) reconsider the matter and make a new final determination or decision; and

(b) cause notice of the action taken pursuant to paragraph (a) to be given and published as provided in paragraph 34(1)(a) and to be given in writing to the Secretary.

Action on final determination or decision referred back by panel

(2) Where a final determination under paragraph 41(1)(a) or a decision under paragraph 41(1)(b) is referred back to the Deputy Minister under Subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4), the Deputy Minister shall:

(a) reconsider the final determination or decision and confirm or rescind it or, in the case of a final determination, vary it; and

(b) cause notice of the action taken pursuant to paragraph (a) to be given and published as provided in paragraph 34(1)(a) and to be given in writing to the Secretary and the Canadian Secretary.

Final determination

(3) Where the Deputy Minister reconsiders a matter involving a final determination pursuant to Subsection (1) or reconsiders and rescinds a final determination pursuant to Subsection (2), Section 41 shall again apply in respect of the goods to which the final determination applied as if that Section had not previously applied in respect of those goods, except that the action that the Deputy Minister is required by that Section to take shall, notwithstanding anything therein, be taken by the Deputy Minister within such period as is specified by the panel that made the order or the Federal Court of Appeal, as the case may be, or, in the case of the Federal Court of Appeal, within 90 days after the Court gives its ruling, if it did not specify a period.

Decision to terminate

(4) Where the Deputy Minister reconsiders a matter involving a decision pursuant to Subsection (1) or reconsiders and rescinds a decision pursuant to Subsection (2),

(a) the Deputy Minister shall be deemed to have made, on the day on which the order referring the matter or decision back to the Deputy Minister was made, a preliminary determination of dumping or subsidizing in respect of the goods that were the subject of the investigation that was terminated;

(b) the Deputy Minister shall resume the investigation that was terminated;

(c) Section 41 shall again apply as described in Subsection (3); and

(d) Sections 42 and 43 shall again apply in respect of the goods to which the decision relates as if those sections had not previously applied in respect of those goods, except that the action that the Tribunal is required by those Sections to take shall, notwithstanding anything therein, be taken by the Tribunal within 120 days after the day on which the order referring the decision back to the Deputy Minister was made.

Deputy Minister to be guided by Canada's obligations

41.2 The Deputy Minister shall, in an investigation respecting the subsidizing of any goods, take into account the provisions of paragraphs 10 and 11 of Article 27 of the Subsidies Agreement.

INQUIRIES BY TRIBUNAL

Tribunal to make inquiry

42. (1) The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:

(a) in the case of any goods to which the preliminary determination applies, as to whether the dumping or subsidizing of the goods:

(i) has caused injury or retardation or is threatening to cause injury, or

(ii) would have caused injury or retardation except for the fact that provisional duty was imposed in respect of the goods;

(b) in the case of any dumped goods to which the preliminary determination applies, as to whether:

(i) either:

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures, or

(B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury, and

(ii) injury has been caused by reason of the fact that the dumped goods:

(A) constitute a massive importation into Canada, or

(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time,

and it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of that injury; and

(c) in the case of any subsidized goods in respect of which a specification has been made pursuant to Clause 41(1)(a)(iv)(C) and to which the preliminary determination applies as to whether:

(i) injury has been caused by reason of the fact that the subsidized goods

(A) constitute a massive importation into Canada, or

(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time, and

(ii) a countervailing duty should be imposed on the subsidized goods in order to prevent the recurrence of that injury.

Tribunal to make or resume inquiry

(2) Where the Secretary receives a notice pursuant to paragraph 52(1)(e) in respect of goods with respect to which an undertaking or undertakings have been terminated, the Tribunal shall, unless it has already made a finding with respect to the goods, forthwith make or resume its inquiry as to whether the dumping or subsidizing:

(a) has caused injury or retardation or is threatening to cause injury; or

(b) would have caused, during any period after the undertaking or undertakings, as the case may be, with respect to the goods were accepted, injury, retardation or threat of injury except for that acceptance.

Assessment of cumulative effect

(3) In making or resuming its inquiry under subsection (1), the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if:

(a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and

(b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and

(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or

(ii) like goods of domestic producers.

Tribunal to be guided by Canada's obligations

(4) The Tribunal shall, in making a cumulative assessment under Subsection (3), take into account the provisions of paragraph 12 of Article 27 of the Subsidies Agreement.

When domestic industry based on regional markets

(5) Where Subsection 2(1.1) applies in respect of the dumping or subsidizing of goods to which the preliminary determination applies, the Tribunal shall not find that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury unless:

(a) there is a concentration of those goods into the regional market; and

(b) the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

Tribunal to make order or finding

43. (1) In any inquiry referred to in Section 42 in respect of any goods, the Tribunal shall, forthwith after the date of receipt by the Secretary of notice of a final determination of dumping or subsidizing with respect to any of those goods, but, in any event, not later than 120 days after the date of receipt by the Secretary of notice of a preliminary determination with respect to the goods, make such order or finding with respect to the goods to which the final determination applies as the nature of the matter may require, and shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies.

Separate order or finding

(1.01) Where an inquiry referred to in Section 42 involves goods of:

(a) more than one NAFTA country, or

(b) one or more NAFTA countries and goods of one or more other countries,

the Tribunal shall make a separate order or finding under Subsection (1) with respect to the goods of each NAFTA country.

Suspension of S. (1.1)

(1.02) The operation of subsection (1.1) is suspended during the period in which subsection (1.01) is in force.

Separate order or finding

(1.1) Where an inquiry referred to in Section 42 involves goods of the United States as well as goods of other countries, the Tribunal shall make a separate order or finding under Subsection (1) with respect to the goods of the United States.

Notice of order or finding

(2) The Secretary shall forward by registered mail to the Deputy Minister, the importer, the exporter and such other persons as may be specified by the rules of the Tribunal:

(a) forthwith after it is made, a copy of each order or finding made by the Tribunal pursuant to this Section; and

(b) not later than 15 days after the making of an order or finding by the Tribunal pursuant to this Section, a copy of the reasons for making the order or finding.

Publication of notice

(3) The Secretary shall cause a notice of each order or finding made by the Tribunal pursuant to this Section to be published in the Canada Gazette.

Recommencement of inquiry

44. (1) Where pursuant to an application for judicial review under the Federal Court Act or an application under Section 96.1 of this Act, an order or finding of the Tribunal is set aside or is set aside in relation to particular goods, the Tribunal shall:

(a) where the matter is referred back to the Tribunal for determination, forthwith recommence the inquiry made in respect of the goods to which the order or finding applies or in respect of the particular goods, as the case may be, and

(b) in any other case, decide, within 30 days after the final disposition of the application, whether or not to recommence the inquiry in respect of the goods to which the order or finding applies or in respect of the particular goods, as the case may be, and, if the Tribunal decides that the inquiry should be recommenced, forthwith recommence the inquiry,

and a new order or finding compatible with the final disposition of the issues raised by or as a result of the application shall be made by the Tribunal with respect to the goods in respect of which the inquiry is recommenced forthwith and, in any event, not later than 120 days after:

(c) where paragraph (a) applies, the date on which the order or finding is set aside, and

(d) where paragraph (b) applies, the date on which the Tribunal decides that the inquiry should be recommenced.

Idem

(2) Where an inquiry is recommenced pursuant to Subsection (1) with respect to any goods:

(a) the Secretary shall forthwith give notice of the recommencement of the inquiry with respect to those goods to every person to whom the Secretary forwarded, pursuant to Subsection 43(2), a copy of the order or finding with respect to which the application under the Federal Court Act was made; and

(b) the Tribunal shall, for the purpose of making the new order or finding referred to in Subsection (1), take any further steps in the inquiry, whether

by way of hearing or re-hearing any matter, the receipt of additional evidence or otherwise, that it considers necessary or advisable.

Where imposition of duty not in public interest

45. (1) Where, as a result of an inquiry referred to in Section 42 arising out of the dumping or subsidizing of any goods, the Tribunal makes an order or finding described in any of Sections 3 to 6 with respect to those goods and the Tribunal is of the opinion that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of those Sections, in respect of the goods would not or might not be in the public interest, the Tribunal shall, forthwith after making the order or finding,

(a) report to the Minister of Finance that it is of that opinion and provide him with a statement of the facts and reasons that caused it to be of that opinion; and

(b) cause a copy of the report to be published in the Canada Gazette.

Persons interested may make representations

(2) Where any person interested in an inquiry referred to in Subsection (1) makes a request to the Tribunal for an opportunity to make representations to the Tribunal on the question whether the Tribunal should, if it makes an order described in any of Sections 3 to 6 with respect to any goods in respect of which the inquiry is being made, make a report pursuant to paragraph (1)(a) with respect to those goods, the Tribunal shall afford that person an opportunity to make representations to the Tribunal on that question orally or in writing, or both, as the Tribunal directs in the case of that inquiry.

Tribunal to advise Deputy Minister

46. Where, during an inquiry referred to in Section 42 respecting the dumping or subsidizing of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that:

(a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and

(b) the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (a) has caused injury or retardation or is threatening to cause injury,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), shall so advise the Deputy Minister.

Termination of proceedings

47. Subject to Part I.1 or II and Subsections 76(2.1) and (2.2), an order or finding made by the Tribunal with respect to any dumped or subsidized goods, other than an order or finding described in any of Sections 3 to 6, terminates all proceedings under this Act respecting the dumping or subsidizing of the goods.

48. [Repealed, R.S., 1985, C. 47 (4th Supp.), S. 52]

UNDERTAKINGS

Acceptance of undertaking

49. (1) Subject to Subsection (2), the Deputy Minister may, in an investigation respecting the dumping or subsidizing of goods, accept an undertaking or undertakings with respect to dumped or subsidized goods where the Deputy Minister is of the opinion that observance of the undertaking or undertakings, as the case may be, will eliminate:

(a) the margin of dumping of or the subsidy on:

(i) where the undertaking is given by an exporter, the goods if they are sold by the exporter to importers in Canada, and

(ii) where the undertaking is given by the government of a country from which the goods are exported to Canada, the goods if they are exported to Canada from that country pursuant to sales thereof by exporters to importers in Canada; or

(b) any injury, retardation or threat of injury that is being caused by the dumping or subsidizing.

Idem

(2) The Deputy Minister shall not accept an undertaking with respect to dumped or subsidized goods:

(a) unless he is of the opinion that observance of the undertaking will not cause:

(i) where the undertaking is given by an exporter, the price at which the goods are sold to importers in Canada by the exporter, or

(ii) where the undertaking is given by the government of a country, the price at which the goods, when exported to Canada from that country, will be sold to importers in Canada,

to increase by more than the estimated margin of dumping of the goods or the estimated amount of subsidy thereon;

(b) unless the Deputy Minister has made a preliminary determination under subsection 38(1); or

(c) where he is of the opinion that it would not be practicable to administer the undertaking or undertakings, as the case may be.

Request to complete investigation and inquiry

(3) Where the exporter, in the case of an investigation and inquiry with respect to dumped goods, or the government of the exporting country, in the case of an investigation and inquiry with respect to subsidized goods, wishes to offer an undertaking with respect to the dumped or subsidized goods, as the case may be, but wishes the investigation and inquiry with respect to the goods to be completed,

(a) the undertaking must be accompanied by a request to the Deputy Minister to complete the investigation; and

(b) a request must be made to the Tribunal to complete its inquiry.

Time for offering undertaking

(4) The Deputy Minister may refuse to accept any undertaking offered after such period of time as is prescribed for the purpose of this subsection.

Procedure where undertaking accepted

50. Forthwith after the Deputy Minister accepts, in an investigation by the Deputy Minister under Section 31, an undertaking or undertakings with respect to dumped or subsidized goods:

(a) the Deputy Minister shall:

(i) cause notice of the acceptance to be given and published as provided in paragraph 34(1)(a),

(ii) suspend the collection of provisional duties with respect to those goods, as provided under Subsection 8(5),

(iii) suspend the investigation unless the requests referred to in Subsection 49(3) were made, and

(iv) notify the Tribunal of any suspension under subparagraph (iii); and

(b) the Tribunal shall suspend its inquiry with respect to the dumping or subsidizing of goods with respect to which the undertaking or undertakings have been accepted unless the requests referred to in Subsection 49(3) were made.

Suspension of operation of time period

50.1 (1) Where an undertaking has been accepted with respect to the dumping or subsidizing of goods, the operation of any period specified, pursuant to this Act, for the doing of any thing in relation to those goods is suspended for such period as the undertaking is in force and is resumed on the expiration or termination of the undertaking.

Extension of time period

(2) A period to which Subsection (1) applies is extended by a period equal to:

(a) where Subsection 51(1) applies in respect of the undertaking, the period between the day on which the undertaking was accepted and the day on which it was terminated; or

(b) in any other case, the period between the day on which the preliminary determination was made in respect of the goods to which the undertaking applies and the day on which the undertaking was accepted.

Deputy Minister to terminate undertaking

51. (1) The Deputy Minister shall forthwith terminate an undertaking in respect of which the Deputy Minister receives, within 30 days after the date of the notice of acceptance of an undertaking or undertakings with respect to dumped or subsidized goods given pursuant to paragraph 50(a)(i) but before an order is made by the Tribunal under Subsection 43(1) in respect of the goods, a request for termination from:

(a) in the case of dumped goods, the importer or exporter of the goods or the complainant in the investigation respecting the goods; and

(b) in the case of subsidized goods, the importer, exporter or government of the country of export of the goods or the complainant in the investigation respecting the goods.

Deputy Minister to resume investigation

(2) Where the Deputy Minister terminates any undertaking pursuant to Subsection (1), he shall forthwith cause the investigation to be resumed with respect to all the goods to which the investigation related when he accepted the undertaking or undertakings, as the case may be, and shall cause notice of the resumption of the investigation to be given as provided in paragraph 34(1)(a).

Termination of undertakings by Deputy Minister

52. (1) Where, at any time after accepting an undertaking or undertakings with respect to any dumped or subsidized goods that were the subject of an investigation, the Deputy Minister:

(a) is satisfied that the undertaking or any of the undertakings has been or is being violated,

(b) would not have accepted the undertaking or undertakings if the information available at that time had been available when the undertaking was accepted, or

(c) would not have accepted the undertaking or undertakings if the circumstances prevailing at that time had prevailed when the undertaking was accepted,

the Deputy Minister shall forthwith

(d) terminate the undertaking or undertakings,

(e) cause notice of the termination of the undertaking or undertakings to be given and published as provided in paragraph 34(1)(a) and filed with the Secretary in writing, and

(f) where the investigation has been suspended under subparagraph 50(a)(iii), cause it to be resumed.

Termination where no dumping, etc.

(1.1) Where, at any time after the Deputy Minister accepts an undertaking or undertakings with respect to any dumped or subsidized goods that were the subject of an investigation:

(a) there has been a determination under Subsection 41(1) or Section 41.1 that:

(i) there has been no dumping or subsidizing of the goods,

(ii) the margin of dumping of, or the amount of the subsidy on, the goods is insignificant, or

(iii) the actual or potential volume of dumped or subsidized goods is negligible,

(b)an order or finding has been made under Subsection 43(1) that there has been no injury, retardation or threat of injury as a result of the dumping or subsidizing of the goods, or

(c)the Tribunal has, under Subsection 76(4), (4.1) or (4.11) or 76.1(2), rescinded an order or finding with respect to the goods,

the Deputy Minister shall forthwith

(d) terminate the undertaking or undertakings, and

(e)cause notice of the termination of the undertaking or undertakings to be given and published as provided in paragraph 34(1)(a) and filed with the Secretary in writing.

Termination where conditions no longer exist

(1.2) Except where the Tribunal has made an order or finding under Subsection 43(1) that the dumping or subsidizing of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury, and that order or finding has not been rescinded under Subsection 76(4), (4.1) or (4.11) or 76.1(2), the Deputy Minister shall terminate the undertaking or undertakings where, at any time after accepting the undertaking or undertakings, the Deputy Minister is satisfied that, notwithstanding the termination of the undertaking or undertakings, the condition in paragraph 49(1)(a) or (b), as the case may be, would no longer exist.

Effect of termination of undertaking

(1.3) A termination of an undertaking under Subsection (1.2) terminates all proceedings under this Act respecting the dumping or subsidizing of the goods to which the undertaking relates, unless, in any case where the Deputy Minister has accepted two or more undertakings, the Deputy Minister, for good reason, otherwise directs.

Where no action to be taken

(2) Where, in any investigation respecting the dumping or subsidizing of goods, a number of undertakings are accepted by the Deputy Minister under Section 49 and any one or more of those undertakings have been or are being violated, the Deputy Minister shall not, unless he sees good reason to the contrary, take any action under Subsection (1) if the undertakings that have not been and are not being violated account for substantially all the imports into Canada of the goods.

Review and renewal of undertaking by Deputy Minister

53. (1) Except where the Tribunal has made an order or finding under Subsection 43(1) that the dumping or subsidizing of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury and that order or finding has not been rescinded under Subsection 76(4), (4.1) or (4.11) or 76.1(2), the Deputy Minister shall review the undertaking before the expiration of five years from the date on which it was accepted and before the expiration of each subsequent period, if any, for which it is renewed pursuant to this Section and if, on any such review, the Deputy Minister is satisfied:

(a) that the undertaking continues to serve the purpose for which it was intended, and

(b) that the Deputy Minister is not required to terminate it under Section 52,

the Deputy Minister shall renew the undertaking for a further period of not more than five years.

Expiration of undertaking

(2) An undertaking that is not renewed for a further period pursuant to a review under Subsection (1) expires at the end of the period before the expiration of which the review was required to be made.

Expiration terminates all proceedings

(3) Where an undertaking expires by reason of Subsection (2), the expiration terminates all proceedings under this Act respecting the dumping or subsidizing of the goods to which the undertaking relates, unless, in any case where the Deputy Minister has accepted two or more undertakings, the Deputy Minister, for good reason, otherwise directs.

Notice

(4) Where an undertaking is renewed or not renewed pursuant to Subsection (1), the Deputy Minister shall cause notice of the decision to renew or not to renew, as the case may be, to be given and published as provided in paragraph 34(1)(a) and filed with the Secretary.

Action on decision referred back by Court

53.1 (1) Where a decision under Subsection 53(1) to renew or not to renew an undertaking is set aside and the matter referred back to the Deputy Minister on an application under Section 96.1:

(a) the Deputy Minister shall:

(i) reconsider the matter and make a new decision, and

(ii) cause notice of the action taken pursuant to subparagraph (i) to be given and published as provided in paragraph 34(1)(a) and filed with the Secretary; and

(b) in the case of a decision not to renew an undertaking, the undertaking shall be deemed to have been renewed on the day on which the order

referring the matter back is made and continues in effect until action is taken pursuant to subparagraph (a)(i).

Action on decision referred back by panel

(2) Where a decision under Subsection 53(1) to renew or not to renew an undertaking is referred back to the Deputy Minister under Subsection 77.015(3) or (4) or 77.019(5), or under Subsection 77.15(3) or (4) or 77.19(4):

(a) the Deputy Minister shall:

(i) reconsider the decision and confirm, rescind or vary it, and

(ii) cause notice of the action taken pursuant to subparagraph (i) to be given and published as provided in paragraph 34(1)(a) and filed with the Secretary and the Canadian Secretary; and

(b) in the case of a decision not to renew an undertaking, the undertaking shall be deemed to have been renewed on the day on which the order is made and continues in effect until action is taken pursuant to subparagraph (a)(i).

Amendment of undertaking

54. Subject to Subsections 53(1) and (2), an undertaking may be amended at any time in accordance with its terms.

DETERMINATIONS BY DESIGNATED OFFICER

Determination by designated officer

55. (1) Where the Deputy Minister:

(a)has made a final determination of dumping or subsidizing under Subsection 41(1) with respect to any goods, and

(b)has, where applicable, received from the Tribunal an order or finding described in any of Sections 4 to 6 with respect to the goods to which the final determination applies,

the Deputy Minister shall cause a designated officer to determine, not later than six months after the date of the order or finding,

(c)in respect of any goods referred to in Subsection (2), whether the goods are in fact goods of the same description as goods described in the order or finding,

(d)the normal value and export price of or the amount of subsidy on the goods so released, and

(e)where Section 6 or 10 applies in respect of the goods, the amount of the export subsidy on the goods.

Application

(2) Subsection (1) applies only in respect of:

(a)goods released on or after the day on which a preliminary determination has been made, and on or before the day on which an undertaking has been accepted, in respect of the goods;

(b) goods described in paragraph 5(b) or 6(b);

(c)goods that are released on or after the day on which an undertaking with respect to those goods has been terminated pursuant to Section 52 and on or before the day on which the Tribunal makes an order or finding pursuant to Subsection 43(1) with respect to the goods; and

(d) goods described in paragraph 4(1)(b) or (2)(c).

RE-DETERMINATIONS AND APPEALS

Re-determination by Designated
Officer or Deputy Minister

Determination final

56. (1) Where, subsequent to the making of an order or finding of the Tribunal or an order of the Governor in Council imposing a countervailing duty under Section 7, any goods are imported into Canada, a determination by a customs officer:

(a) as to whether the imported goods are goods of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies,

(b) of the normal value of or the amount, if any, of the subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies, and

(c) of the export price of or the amount, if any, of the export subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal applies,

made within 30 days after they were accounted for under Subsection 32(1), (3) or (5) of the Customs Act is final and conclusive.

Request for re-determination

(1.01) Notwithstanding Subsection (1):

(a)where a determination referred to in that subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within 90 days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a re-determination, if the importer has paid all duties owing on the goods; and

(b)where a determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer of the goods has paid all duties owing on the goods.

Suspension of S. (1.1)

(1.02) The operation of Subsection (1.1) is suspended during the period in which Subsection (1.01) is in force.

Request for re-determination

(1.1) Notwithstanding Subsection (1):

(a)where a determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within 90 days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a re-determination, if the importer has paid all duties owing on the goods; and

(b)where a determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer of the goods has paid all duties owing on the goods.

Determination deemed to have been made

(2) Where, in the case of any imported goods referred to in Subsection (1), a determination referred to in that subsection that is relevant in the case of those goods is not in fact made in respect of them within the thirty days referred to in that Subsection, that determination shall be deemed to have been made:

(a) on the thirtieth day after the goods were accounted for; and

(b) in accordance with any representations made by the person accounting for the goods at the time of the accounting.

Review by designated officer

57. A designated officer may re-determine any determination referred to in Subsection 56(1),

(a) in accordance with a request made pursuant to Subsection 56(1.01) or (1.1), or

(b) in any case where he deems it advisable, within two years after the determination,

unless the Deputy Minister has previously re-determined the determination pursuant to Section 59.

Determination or re-determination final

58. (1) A determination or re-determination by a designated officer under Section 55 or 57 with respect to any imported goods is final and conclusive.

Request for re-determination

(1.1) Notwithstanding subsection (1):

(a) where a determination or re-determination referred to in that Subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within 90 days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the Deputy Minister for a redetermination, if the importer has paid all duties owing on the goods; and

(b) where a determination or re-determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.

Suspension of S. (2)

(1.2) The operation of Subsection (2) is suspended during the period in which Subsection (1.1) is in force.

Request for re-determination

(2) Notwithstanding subsection (1):

(a) where a determination or re-determination referred to in that Subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within 90 days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the Deputy Minister for a re-determination, if the importer has paid all duties owing on the goods; and

(b) where a determination or re-determination referred to in that Subsection is made in respect of goods of the United States, the United States

Government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.

Permissive re-determination

59. (1) Subject to Subsection (3), the Deputy Minister may re-determine any determination or re-determination referred to in Sections 55, 56 or 57 made in respect of any imported goods

(a) in accordance with a request made pursuant to Subsection 58(1.1) or (2);

(b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in accounting for the goods under Subsection 32(1), (3) or (5) of the Customs Act or in obtaining release of the goods;

(c) at any time, if Subsection 2(6) or Section 26 applies or at any time becomes applicable in respect of the goods;

(d) at any time, for the purpose of giving effect to a decision of the Tribunal, the Federal Court or the Supreme Court of Canada with respect to the goods; and

(e) in any case where the Deputy Minister deems it advisable, within two years after the determination referred to in Section 55 or Subsection 56(1), as the case may be, if the Deputy Minister has not previously made a re-determination with respect to the goods pursuant to any of paragraphs (a) to (d) or Subsection (2) or (3).

Idem

(2) The Deputy Minister may re-determine any determination or re-determination referred to in Sections 55, 56 or 57 made in respect of any imported goods at any time for the purpose of giving effect to a decision of a panel under Part I.1 or II with respect to the goods.

Mandatory re-determination

(3) On a request made under Subsection 58(1.1) or (2) to re-determine a determination under Section 55 or a re-determination under Section 57, the Deputy Minister shall:

(a) in the case of a determination under Section 55 or a re-determination under paragraph 57(b), re-determine the determination or re-determination within one year after the request under Subsection 58(1.1) or (2) was made; and

(b) in the case of a re-determination under paragraph 57(a), re-determine the re-determination within one year after the request under Subsection 56(1.01) or (1.1) was made.

Notice of re-determination

(3.1) The Deputy Minister shall cause notice of each re-determination under this section to be forwarded, by registered mail, to the importer and, where the imported goods are goods of a NAFTA country, to the government of that NAFTA country, to such persons as may be prescribed and, if the re-determination gives effect to a decision of a panel under Part I.1, to the Canadian Secretary.

Presumption

(3.2) A notice sent to the government of a NAFTA country pursuant to Subsection (3.1) shall be deemed, for the purposes of this Act, to have been received by that government 10 days after the day on which it was mailed.

Suspension of SS. (4) and (5)

(3.3) The operation of Subsections (4) and (5) is suspended during the period in which Subsections (3.1) and (3.2) are in force.

Notice of re-determination

(4) The Deputy Minister shall cause notice of each re-determination under this Section to be forwarded, by registered mail, to the importer and, where the imported goods are goods of the United States, to the United States Government, to such persons as may be prescribed and, if the re-determination gives effect to a decision of a panel under Part II, to the Canadian Secretary.

Presumption

(5) A notice sent to the United States Government pursuant to Subsection (4) shall be deemed, for the purposes of this Act, to have been received by that government 10 days after the day on which it was mailed.

Effect of re-determination

60. (1) Where, in accordance with Section 57 or 59, a re-determination as to whether any goods are goods described in paragraph 56(1)(a) or a re-determination of the normal value or export price of or the amount of subsidy or export subsidy on the goods has been made:

(a) the importer shall pay any additional duty payable with respect to the goods, or

(b) the whole or a part of any duty paid in respect of the goods shall be returned to the importer forthwith,

if on the re-determination it is determined that the additional duty is payable or that the whole or the part of the duty paid was not payable, as the case may be.

Decision of Deputy Minister

(2) Notwithstanding Subsection 25(2), any duties imposed, by virtue of this Act, on goods sold to an importer in Canada shall be included in the costs referred to in subparagraph 25(1)(c)(i) or (d)(v), as the case may be, where, in any re-determination referred to in Subsection (1), the Deputy Minister is of the opinion that:

(a) the goods were resold by the person referred to in paragraph 25(1)(c) who purchased the goods from the importer or by a subsequent purchaser at a price that is lower than the total of:

(i) the price at which the seller acquired the goods, and

(ii) the administrative, selling and all other costs directly or indirectly attributable to the sale of the goods; and

(b) the export price, determined under Section 24, of the goods is unreliable for a reason set out in subparagraph 25(1)(b)(ii).

Appeal to Canadian International Trade Tribunal

Appeal to the Tribunal

61. (1) Subject to Section 77.012 or 77.12, a person who deems himself aggrieved by a re-determination of the Deputy Minister made pursuant to Section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.

Publication of notice of appeal

(2) Notice of the hearing of an appeal under Subsection (1) shall be published in the Canada Gazette at least 21 days prior to the day of the

hearing, and any person who on or before that day enters an appearance with the Secretary of the Tribunal may be heard on the appeal.

Order or finding of the Tribunal

(3) On any appeal under Subsection (1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in Section 62.

Appeal to Federal Court

Appeal to Federal Court on question of law

62. (1) Any of the parties to an appeal under Section 61, namely:

(a) the person who appealed,

(b) the Deputy Minister, or

(c) any person who entered an appearance in accordance with Subsection 61(2), if the person has a substantial interest in the appeal and has obtained leave from the Court or a judge thereof,

may, within 90 days after the making of an order or finding under Subsection 61(3), appeal therefrom to the Federal Court of Appeal on any question of law.

Disposition of appeal

(2) The Federal Court of Appeal may dispose of an appeal by making such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may:

(a) declare what duty is payable or that no duty is payable on the goods with respect to which the appeal to the Tribunal was taken; or

(b) refer the matter back to the Tribunal for re-hearing.

Interest on amounts owing

62.1 (1) Any person who fails to pay any amount owing under paragraph 60(1)(a) shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing 30 days after the amount became outstanding during which any amount remains outstanding, calculated on the amount outstanding.

Interest on refunds

(2) Any person who is given a refund under paragraph 60(1)(b) of an amount paid shall be given, in addition to the refund, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the amount was paid and the time the refund is given, calculated on the amount of the refund.

Amounts under ten dollars

(3) Where interest owing under this section is less than ten dollars, no interest shall be paid.

63. to 75. [Repealed, R.S., 1985, C. 47 (4th Supp.), S. 52]

Finality and Review of Orders and Findings

Application for judicial review

76. (1) Subject to Subsection 61(3) and Part I.1 or II, an application for judicial review of an order or finding of the Tribunal under this Act may be made to the Federal Court of Appeal on any of the grounds set out in Subsection 18.1(4) of the Federal Court Act.

Review of orders by Tribunal and re-hearing

(2) At any time after the making of an order or finding described in any of Sections 3 to 6, the Tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in the making of the review, may re-hear any matter before deciding it.

Idem

(2.1) Where the Tribunal receives notice of action taken pursuant to paragraph 41.1(1)(a) or (2)(a) in respect of goods to which an order or finding of the Tribunal, other than an order or finding described in any of Sections 3 to 6, applies, the Tribunal may, on its own initiative or at the request of the Deputy Minister or any other person or of any government, review the order or finding and, in making such a review, may re-hear any matter before deciding it.

Idem

(2.2) Where an order or finding of the Tribunal is referred back to the Tribunal under Subsection 77.015(3) or (4) or 77.019(5), or under Subsection 77.15(3) or (4) or 77.19(4), the Tribunal shall review the order or finding and, in making such a review, may rehear any matter before deciding it.

Refusal

(3) The Tribunal shall not initiate any review pursuant to Subsection (2) or (2.1) at the request of any person or government unless the person or government satisfies the Tribunal that a review is warranted.

Order of refusal

(3.1) Where the Tribunal decides not to initiate a review pursuant to Subsection (2) at the request of a person or government, the Tribunal shall make an order to that effect and give reasons therefor, and the Secretary shall forward a copy of the order and the reasons by registered mail to that person or government and cause notice of the order to be published in the Canada Gazette.

Completion of review

(4) On completion of a review pursuant to Subsection (2) of an order or finding, the Tribunal shall make an order rescinding the order or finding or continuing it with or without amendment, as the circumstances require, and give reasons for the decision.

Idem

(4.1) On completion of a review pursuant to Subsection (2.1) or (2.2) of an order or finding, the Tribunal shall confirm the order or finding or rescind it and make such other order or finding with respect to the goods to which the order or finding under review applies as the nature of the matter may require, shall give reasons for the decision and, where it makes another order or finding, shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies.

Separate order or finding

(4.11) Where a review pursuant to subsection (2.1) involves goods of:

(a) more than one NAFTA country, or

(b) one or more NAFTA countries and goods of one or more other countries

and the Tribunal makes another order or finding pursuant to Subsection (4.1), the Tribunal shall make a separate order or finding under that Subsection with respect to the goods of each NAFTA country.

Suspension of S. (4.2)

(4.12) The operation of Subsection (4.2) is suspended during the period in which Subsection (4.11) is in force.

Idem

(4.2) Where a review pursuant to Subsection (2.1) involves goods of the United States as well as goods of other countries and the Tribunal makes another order or finding pursuant to Subsection (4.1), the Tribunal shall make a separate order or finding under that Subsection with respect to the goods of the United States.

Notice

(4.3) On completion of a review pursuant to subsection (2), (2.1) or (2.2), the Secretary shall:

(a) forward by registered mail to the Deputy Minister, such other persons and such governments as may be specified by the rules of the Tribunal and, in the case of a review under Subsection (2.2), the Canadian Secretary:

(i) forthwith after the review is completed, a copy of the order or finding made under Subsection (4) or (4.1), as the case may be, and

(ii) not later than 15 days after the completion of the review, a copy of the reasons for the decision; and

(b) cause notice of the order or finding to be published in the Canada Gazette.

Order or finding deemed to be rescinded

(5) Where the Tribunal has not initiated a review pursuant to Subsection (2) with respect to an order or finding before the expiration of five years after:

(a) if no order continuing the order or finding has been made pursuant to Subsection (4), the day on which the order or finding was made, or

(b) if one or more orders continuing the order or finding have been made pursuant to Subsection (4), the day on which the last such order was made,

the order or finding shall be deemed to have been rescinded as of the expiration of the five years.

Request by Minister of Finance for review

76.1 (1) Where at any time after the issuance, by the Dispute Settlement Body established pursuant to Article 2 of Annex 2 to the WTO Agreement, of a recommendation or ruling, the Minister of Finance considers it necessary to do so, having regard to the recommendation or ruling, the Minister of Finance may request that:

(a) the Deputy Minister review any decision or determination or any portion of a decision or determination made under this Act; or

(b) the Tribunal review any order or finding described in any of Sections 3 to 6, or any portion of such an order or finding and, in making the review, the Tribunal may re-hear any matter before deciding it.

Result of review

(2) On completion of a review under Subsection (1), the Deputy Minister or the Tribunal, as the case may be, shall:

(a) continue the decision, determination, order or finding without amendment;

(b) continue the decision, determination, order or finding with such amendments as the Deputy Minister or the Tribunal, as the case may be, considers necessary; or

(c) rescind the decision, determination, order or finding and make such other decision, determination, order or finding as the Deputy Minister or the Tribunal, as the case may be, considers necessary.

Reasons

(3) Where a decision, determination, order or finding is continued under paragraph (2)(a) or (b) or made under paragraph (2)(c), the Deputy Minister or the Tribunal, as the case may be, shall give reasons therefor and shall set out to what goods, including, where practicable, the name of the supplier and the country of export, the decision, determination, order or finding applies.

Notification of Minister of Finance

(4) The Deputy Minister or the Tribunal, as the case may be, shall notify the Minister of Finance of any decision, determination, order or finding continued under paragraph (2)(a) or (b) or made under paragraph (2)(c).

Deeming

(5) Any decision or determination continued by the Deputy Minister under paragraph (2)(b) or made by the Deputy Minister under paragraph (2)(c) is deemed to have been made under:

(a) paragraph 41(1)(a), where the decision or determination was continued or made as a result of a review under this section of a final determination of the Deputy Minister under that paragraph;

(b) paragraph 41(1)(b), where the decision or determination was continued or made as a result of a review under this section of a decision of the Deputy Minister under that paragraph to cause an investigation to be terminated; or

(c) Subsection 53(1), where the decision or determination was continued or made as a result of a review under this Section of a decision of the Deputy Minister under that subsection to renew or not to renew an undertaking.

77. [Repealed, R.S., 1985, C. 47 (4th Supp.), S. 52]

PART I.1

DISPUTE SETTLEMENT RESPECTING GOODS OF A NAFTA COUNTRY

Interpretation

Definitions

77.01 (1) In this Part,

"appropriate authority"

"autorité compétente"

"appropriate authority", in relation to a definitive decision, means either the Deputy Minister or the Tribunal, according to which made the decision;

"committee"

"comité"

"committee" means an extraordinary challenge committee appointed pursuant to section 77.018;

"definitive decision"

"décisions..."

"definitive decision" means:

- (a) a final determination of the Deputy Minister under paragraph 41(1)(a),
- (b) a decision of the Deputy Minister under paragraph 41(1)(b) to cause an investigation to be terminated,
- (c) an order or finding of the Tribunal under Subsection 43(1),
- (d) a decision of the Deputy Minister under Subsection 53(1) to renew or not to renew an undertaking,
- (e) a re-determination of the Deputy Minister under Subsection 59(1),
- (f) a re-determination of the Deputy Minister under Subsection 59(3),
- (g) an order of the Tribunal under Subsection 76(3.1),
- (h) an order of the Tribunal under Subsection 76(4),
- (i) an order or finding of the Tribunal under Subsection 76(4.1) respecting a review pursuant to subsection 76(2.1), or
- (i.1) an order or finding of the Tribunal under paragraph 76.1(2)(b) or (c);
- (j) an order or finding of the Tribunal under Subsection 91(3)

in so far as it applies to or is made in respect of particular goods of a NAFTA country, but does not include any such determination, re-determination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Canada or the Supreme Court of Canada relating to those goods;

"Minister"

"ministre"

"Minister" means the Minister for International Trade;

"NAFTA country Secretary"

"secrétaire national"

"NAFTA country Secretary" means the secretary of the national Section of the Secretariat provided for in Article 2002 of the North American Free Trade Agreement;

"panel"

"groupe..."

"panel" means a panel appointed pursuant to Section 77.013;

"rules"

"règles"

"rules" means the rules of procedure, as amended from time to time, made pursuant to Chapter Nineteen of the North American Free Trade Agreement;

"special committee"

"comité spécial"

"special committee" means a special committee appointed pursuant to Subsection 77.023(2).

Inconsistency

(2) In the event of any inconsistency between the provisions of this Part and the provisions of the Federal Court Act, the provisions of this Part prevail to the extent of the inconsistency.

Request for Review

Request for review of definitive decision

77.011 (1) The Minister or the government of a NAFTA country, the goods of which are the subject of a definitive decision, may request, in accordance with paragraph 4 of Article 1904 of the North American Free Trade Agreement, that the definitive decision, in so far as it applies to goods of that NAFTA country, be reviewed by a panel.

Idem

(2) Any person who, but for Section 77.012, would be entitled to apply under the Federal Court Act or Section 96.1 of this Act, or to appeal under section 61 of this Act, in respect of a definitive decision may, in accordance with paragraph 4 of Article 1904 of the North American Free Trade Agreement, file with the Canadian Secretary a request that the definitive decision be reviewed by a panel.

Deeming

(3) A request made under Subsection (2) shall be deemed to be a request by the Minister for binational panel review within the meaning of paragraph 4 of Article 1904 of the North American Free Trade Agreement.

Limitation period

(4) A request under Subsection (1) or (2) may only be made within thirty days after the day on which notice of the definitive decision is published in the Canada Gazette or, in the case of a re-determination of the Deputy Minister under Subsection 59(1) or (3), within 30 days after the day on which notice of the re-determination is received by the government of a NAFTA country.

Grounds for request

(5) A request under Subsection (1) or (2) for the review of a definitive decision may be made only on a ground set forth in Subsection 18.1(4) of the Federal Court Act.

Notification of request for review

(6) On receiving a request from the government of a NAFTA country under Subsection (1) or on receiving a request under Subsection (2), the Canadian Secretary shall notify the Minister and the appropriate NAFTA country Secretary of the request and the day on which it was received by the Canadian Secretary.

No application or appeal

(7) Where a request is made under Subsection (1) or (2) for the review of a definitive decision by a panel, no person or government may apply under the Federal Court Act or Section 96.1 of this Act or appeal under Section 61 of this Act in respect of the decision.

Applications and appeals

77.012 (1) No person or government may apply under the Federal Court Act or section 96.1 of this Act or appeal under Section 61 of this Act in respect of a definitive decision:

(a)before the expiration of the limitation period established by paragraph 4 of Article 1904 of the North American Free Trade Agreement for requesting a review of the decision; and

(b)unless the person or government has, within twenty days after the day on which that limitation period commences, given notice of the intention to make such an application or appeal in writing to the Canadian Secretary and the appropriate NAFTA country secretary and in the prescribed manner to any other person who, but for this Section, would be entitled to so apply or appeal.

Limitation period extended

(2) For the purpose of permitting a government or person to apply under the Federal Court Act or Section 96.1 of this Act in respect of a definitive decision after the expiration of the limitation period established by paragraph 4 of Article 1904 of the North American Free Trade Agreement for requesting a review of the decision, the limitation period referred to in Subsection 18.1(2) of the Federal Court Act and Subsection 96.1(3) of this Act is extended by 10 days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences.

Establishment of Panels

Appointment of panel

77.013 (1) On a request under Section 77.011 for the review of a definitive decision by a panel, a panel shall be appointed for that purpose in accordance with paragraphs 1 to 4 of Annex 1901.2 to Chapter Nineteen of the North American Free Trade Agreement and any regulations made in connection therewith.

Judges may be appointed

(2) Judges of any superior court in Canada and persons who are retired judges of any superior court in Canada are eligible to be appointed to a panel.

Single panel

(3) Where a request is made for the review of a final determination of the Deputy Minister under paragraph 41(1)(a) that applies to or is made in respect of particular goods of a NAFTA country and another request is made for the review of an order or finding of the Tribunal under Subsection 43(1) that applies to or is made in respect of those goods, one panel may, with the consent of the Minister and the government of that NAFTA country, be appointed to review the final determination and the order or finding.

Administrative record forwarded

77.014 On the appointment of the members of a panel to review a definitive decision, the appropriate authority shall cause a copy of the administrative record to be forwarded in accordance with the rules.

Review by Panel

Conduct of review

77.015 (1) A panel shall conduct a review of a definitive decision in accordance with Chapter Nineteen of the North American Free Trade Agreement and the rules.

Powers of panel

(2) A panel has such powers, rights and privileges as are conferred on it by the regulations.

Disposition after review

(3) On completion of the review of a definitive decision, a panel shall determine whether the grounds on which the review was requested have been established and shall make an order confirming the decision or referring the matter back to the appropriate authority for reconsideration within the period specified by the panel.

Review of action of appropriate authority

(4) A panel may, on its own initiative or on a request made in accordance with the rules, review the action taken by the appropriate authority pursuant to an order under Subsection (3) and make a further order as described in that subsection within 90 days after the day on which the Canadian Secretary receives notice of the action.

Decision

(5) A decision of a panel shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the panel, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made pursuant to Subsection (3) or (4) to the Minister, the government of the NAFTA country involved, the appropriate authority and any other person who was heard in the review and shall cause notice of the decision to be published in the Canada Gazette.

Action on Decision of Panel

Action by appropriate authority

77.016 (1) Where a panel makes an order under Subsection 77.015(3) or (4) or takes any action under Subsection 77.019(5) referring a matter back to the appropriate authority for reconsideration, the appropriate authority shall, within the period specified by the panel, take action under this Act not inconsistent with the decision of the panel.

Appropriate authority not required to act twice

(2) Notwithstanding any other provision of this Act, an appropriate authority is not required to act on an order under Subsection 77.015(4), unless it requires the authority to take action that is different from that taken by the authority under the order under Subsection 77.015(3).

Extraordinary Challenge Proceeding

Request for extraordinary challenge proceeding

77.017 (1) Within the period after a panel makes an order under Subsection 77.015(3) or (4) prescribed by the rules, the Minister or the government of the NAFTA country to which the order relates may request, in writing to the Canadian Secretary, that an extraordinary challenge proceeding be commenced with respect to the order.

Ground for request

(2) A request for an extraordinary challenge proceeding may be made only on a ground set forth in paragraph 13 of Article 1904 of the North American Free Trade Agreement.

Notification of request for extraordinary challenge proceeding

(3) On receiving a request under this section made by the Minister, the Canadian Secretary shall notify the appropriate NAFTA country Secretary of the request and the day on which it was received by the Canadian Secretary, and on receiving a request under this section made by the government of a NAFTA country, the Canadian Secretary shall notify the Minister of the request and the day on which it was received by the Canadian Secretary.

Appointment of extraordinary challenge committee

77.018 On a request under Section 77.017 for an extraordinary challenge proceeding, an extraordinary challenge committee shall be appointed for that purpose in accordance with paragraph 1 of Annex 1904.13 to Chapter Nineteen of the North American Free Trade Agreement and any regulations made in connection therewith.

Conduct of extraordinary challenge proceeding

77.019 (1) A committee shall conduct an extraordinary challenge proceeding and make a decision in accordance with Annex 1904.13 to Chapter Nineteen of the North American Free Trade Agreement and the rules.

Powers of committee

(2) A committee has such powers, rights and privileges as are conferred on it by the regulations.

Where no grounds

(3) Where a committee conducting an extraordinary challenge proceeding determines that the grounds in the request for the proceeding are not established, the committee shall deny the request, and the decision of the panel in respect of which the request was made shall stand affirmed.

New panel

(4) Where an order of a panel is set aside by a committee, a new panel shall, in accordance with this Part, be appointed and conduct a review of the definitive decision that was the subject of that order.

Action by panel

(5) Where an order of a panel is referred back to the panel by a committee, the panel shall take action not inconsistent with the decision of the committee.

Decision

(6) A decision of a committee shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the committee, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made by the committee to the Minister, the government of the NAFTA country involved, the appropriate authority and any other person who was heard in the proceeding and shall cause notice of the decision to be published in the Canada Gazette.

Orders and decisions final

77.02 (1) Subject to Subsection 77.015(4) and Section 77.019, an order or decision of a panel or committee is final and binding and is not subject to appeal.

No review

(2) Subject to Subsection 77.015(4) and Section 77.019, no order, decision or proceeding of a panel or committee made or carried on under, or purporting to be made or carried on under, this Act shall be:

(a) questioned, reviewed, set aside, removed, prohibited or restrained, or

(b) made the subject of any proceedings in, or any process or order of, any court, whether by way of or in the nature of injunction, certiorari, prohibition, quo warranto, declaration or otherwise,

on any ground, including the ground that the order, decision or proceeding is beyond the jurisdiction of the panel or committee to make or carry on or

that, in the course of any proceeding, the panel or committee for any reason exceeded or lost jurisdiction.

No references

(3) Subsection 18.3(1) of the Federal Court Act does not apply to a panel, committee or special committee.

Members

Code of conduct

77.021 (1) Every member of a panel, committee or special committee shall comply with the code of conduct, as amended from time to time, established pursuant to Article 1909 of the North American Free Trade Agreement.

Disclosure undertaking respecting confidential information

(2) Every member of a panel and every prescribed person shall sign and comply with a disclosure undertaking, in the prescribed form, respecting the disclosure and use of confidential, personal, business proprietary and other privileged or prescribed information made available to the member or person in proceedings under this Part.

Immunity

(3) Subject to Section 77.034, no action or other proceeding lies or shall be commenced against a member of a panel for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, under this Part.

Remuneration and expenses of panel members

77.022 Every member of a panel shall be paid such remuneration and is entitled to such travel and living expenses incurred in the performance of the member's duties under this Part as are fixed by the Free Trade Commission established pursuant to Article 2001 of the North American Free Trade Agreement.

Review by Special Committee

Request for review

77.023 (1) A request for a review by a special committee may be made to the Canadian Secretary by the government of a NAFTA country only with respect to an allegation referred to in Article 1905.1 of the North American Free Trade Agreement.

Appointment of special committee

(2) On a request for a review referred to in Subsection (1), a special committee shall be appointed for that purpose in accordance with Annex 1904.13 of the North American Free Trade Agreement and any regulations made in connection therewith.

Stay of panel reviews and committee proceedings

77.024 (1) Subject to Subsection (2), where a special committee makes an affirmative finding against a NAFTA country pursuant to a request made by Canada in respect of an allegation referred to in Article 1905.1 of the North American Free Trade Agreement, the Minister shall stay all:

(a) panel reviews under Section 77.011, and

(b) committee proceedings under Section 77.017

that were requested by the government or a person of that NAFTA country after the date on which consultations were requested under Article 1905.1 of the North American Free Trade Agreement.

Exception

(2) Subsection (1) does not apply in respect of a panel review or committee proceeding that was requested more than 150 days prior to the affirmative finding by the special committee.

Stay on request

77.025 Where a special committee makes an affirmative finding against Canada pursuant to a request made by the government of a NAFTA country, the government of that NAFTA country may request that the Minister stay all:

(a) panel reviews under Section 77.011, and

(b) committee proceedings under Section 77.017

that were requested by the government or a person of that NAFTA country, and where such a request for a stay is made the Minister shall stay all such reviews and proceedings.

When stay becomes effective

77.026 Where the Minister stays panel reviews and committee proceedings, the stay shall become effective

(a) where the stay is made under Section 77.024, on the day following the date on which the special committee made the affirmative finding; and

(b) where the stay is made under Section 77.025, on the day following the date on which the request for the stay was made.

Suspension of time periods

77.027 Where a special committee makes an affirmative finding against Canada or a NAFTA country pursuant to a request made by the government of a NAFTA country or Canada in respect of an allegation referred to in Article 1905.1 of the North American Free Trade Agreement:

(a) the time periods provided for in Subsection 77.011(4) for requesting a panel review and in Subsection 77.017(1) for requesting committee proceedings in respect of goods of that NAFTA country, and

(b) the time periods provided in the Federal Court Act, and in Section 61 and Subsection 96.1(3) of this Act, for appealing, or for requesting judicial review of, any determination, re-determination, decision or order referred to in the definition "definitive decision" in Subsection 77.01(1) in respect of goods of that NAFTA country,

shall not run unless and until resumed in accordance with Subsection 77.033.

Suspension of panel process

77.028 (1) The Minister may suspend the operation of Article 1904 of the North American Free Trade Agreement with respect to goods of a NAFTA country:

(a) at any time after the expiration of 60 days, but not later than 90 days, following an affirmative finding against the NAFTA country by a special committee requested by Canada under Article 1905.2 of the North American Free Trade Agreement; and

(b) at any time where the government of the NAFTA country has suspended the operation of Article 1904 of the North American Free Trade Agreement

with respect to goods of Canada following an affirmative finding by a special committee against Canada.

Notice of suspension

(2) Where the Minister suspends the operation of Article 1904 of the North American Free Trade Agreement under Subsection (1) with respect to goods of a NAFTA country, the Canadian Secretary shall forward a written notice of the suspension to the NAFTA country Secretary of that NAFTA country and shall publish a notice of the suspension in the Canada Gazette.

Suspension of benefits

77.029 (1) The Governor in Council, on the recommendation of the Minister of Finance and the Minister, may, by order, at any time after the expiration of 60 days, but in no case later than 90 days, following an affirmative finding against a NAFTA country by a special committee requested by Canada under Article 1905.2 of the North American Free Trade Agreement, suspend the application to that NAFTA country of such benefits under the North American Free Trade Agreement as the Governor in Council considers appropriate in the circumstances.

Powers

(2) For the purpose of suspending the application to a NAFTA country of benefits under Subsection (1), the Governor in council may do any one or more of the following things:

(a) suspend rights or privileges granted by Canada to that country or to goods, service providers, suppliers, investors or investments of that country under the North American Free Trade Agreement or an Act of Parliament;

(b) modify or suspend the application of any federal law with respect to that country or to goods, service providers, suppliers, investors or investments of that country;

(c) extend the application of any federal law to that country or to goods, service providers, suppliers, investors or investments of that country; and

(d) generally take such action as the Governor in Council considers necessary for that purpose.

Period of order

(3) Unless revoked, an order made under Subsection (1) shall have effect for such period as is specified in the order.

Definitions

(4) In this Section, "federal law" means the whole or any portion of any Act of Parliament or regulation, order or other instrument issued, made or established in the exercise of a power conferred by or under an Act of Parliament.

Order not a statutory instrument

(5) An order made under Subsection (1) is not a statutory instrument for the purposes of the Statutory Instruments Act.

Action consistent with determination

(6) Whenever, after an order is made under Subsection (1), the special committee referred to in that subsection makes a determination pursuant to paragraph 1905.10(a) of the North American Free Trade Agreement, the Governor in Council shall take action consistent with that determination.

Only one section applies

77.03 Where the operation of Article 1904 of the North American Free Trade Agreement is suspended under Section 77.028 in respect of a NAFTA

country, benefits under Article 1905.2 of the North American Free Trade Agreement may not be suspended under Section 77.029 in respect of that NAFTA country, and where benefits under Article 1905.2 of the North American Free Trade Agreement are suspended under Section 77.029 in respect of a NAFTA country, the operation of Article 1904 of the North American Free Trade Agreement may not be suspended under Section 77.028 in respect of that NAFTA country.

Referral to Federal Court of Appeal

77.031 (1) Where the Minister suspends the operation of Article 1904 of the North American Free Trade Agreement under paragraph 77.028(1)(a) and:

(a) where any panel review is stayed under Subsection 77.024(1), the Minister, the government of the NAFTA country, or any party to the stayed panel review may, within 30 days after the date of the suspension, apply to the Federal Court of Appeal for review of the definitive decision that has been the subject of the panel review, on any grounds set out in Subsection 18.1(4) of the Federal Court Act; or

(b) where any committee proceeding is stayed under Subsection 77.024(1), the Minister, the government of the NAFTA country, or any party to the stayed committee proceeding may, within 30 days after the date of the suspension, apply to the Federal Court of Appeal for review of the definitive decision that has been the subject of the original panel decision reviewed by the committee, on any grounds set out in Subsection 18.1(4) of the Federal Court Act.

Idem

(2) Where the government of a NAFTA country suspends the operation of Article 1904 of the North American Free Trade Agreement with respect to goods of Canada under Article 1905.8 of the North American Free Trade Agreement and:

(a) where any panel review is stayed under Section 77.025, the government of the NAFTA country, or persons of that NAFTA country who were party to the stayed panel review may, within 30 days after the date of the suspension, apply to the Federal Court of Appeal for review of the definitive decision that has been the subject of the panel review, on any grounds set out in Subsection 18.1(4) of the Federal Court Act; or

(b) where any committee proceeding is stayed under Section 77.025, the government of the NAFTA country, or persons of that NAFTA country who were party to the stayed committee proceeding may, within 30 days after the date of the suspension, apply to the Federal Court of Appeal for review of the definitive decision that has been the subject of the original panel decision reviewed by the committee, on any grounds set out in Subsection 18.1(4) of the Federal Court Act.

Idem

(3) For the purposes of Subsections (1) and (2), where any application has been made to the Federal Court of Appeal for the review of any definitive decision, that definitive decision may not be subsequently reviewed by a panel or committee if the suspension of Article 1904 is terminated pursuant to Section 77.032.

Termination of suspension

77.032 The Minister shall terminate any suspension effected under Subsection 77.028(1) if a special committee reconvened pursuant to Article 1905.10 of the North American Free Trade Agreement determines that the problems in respect of which the special committee's affirmative finding was based have been corrected.

Resumption

77.033 All panel reviews and committee proceedings stayed under Subsection 77.024(1) or Section 77.025 and any running of the time periods suspended under section 77.027 shall resume:

(a) where the operation of Article 1904 of the North American Free Trade Agreement is not suspended under paragraph 77.028(1)(a), on the expiration of 90 days after the date on which an affirmative finding was made or on such earlier day as the Minister may specify; or

(b) where benefits are suspended under Section 77.029.

Offence

Offence

77.034 (1) Every person commits an offence who contravenes or fails to comply with:

(a) a disclosure undertaking under Subsection 77.021(2);

(b) the rules respecting the disclosure and use of confidential, personal, business proprietary or other privileged or prescribed information; or

(c) a disclosure order or protective order covering personal, business proprietary or other privileged or prescribed information made under the law of any NAFTA country giving effect to the North American Free Trade Agreement.

Punishment

(2) Every person who commits an offence under Subsection (1)

(a) is guilty of an indictable offence and liable to a fine not exceeding one million dollars; or

(b) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding 100,000 dollars.

Consent

(3) No proceedings for an offence under this section shall be instituted without the consent in writing of the Attorney General of Canada.

Regulations

Regulations

77.035 The Governor in Council may, on the recommendation of the Minister and the Minister of Finance, make regulations:

(a) conferring on a panel, committee or special committee such powers, rights and privileges as the Governor in Council deems necessary for giving effect to Chapter Nineteen of the North American Free Trade Agreement and the rules, including powers, rights and privileges of a superior court of record;

(b) authorizing a designated officer, or an officer of a designated class of officers, employed in or occupying a position of responsibility in the service of Her Majesty to perform duties or functions of the Minister under this Part;

(c) for carrying out and giving effect to paragraphs 1 to 4 of Annex 1901.2, and paragraph 1 of Annex 1904.13, of Chapter Nineteen of the North American Free Trade Agreement; and

(d) generally for carrying out the purposes and provisions of this Part.

Publication in Canada Gazette

77.036 The rules, the code of conduct established pursuant to Article 1909 of the North American Free Trade Agreement and any amendments made to the rules or code shall be published in the Canada Gazette.

Application of Acts

Application

77.037 No provision

(a) of an Act to amend this Act,

(b) of any other Act of Parliament respecting the imposition of anti-dumping or countervailing duties, or

(c) amending a provision of an Act of Parliament providing for judicial review of a definitive decision or setting forth the grounds for such a review

that comes into force after the coming into force of this section shall be applied in respect of goods of a NAFTA country, unless it is expressly declared by an Act of Parliament that the provision applies in respect of goods of that NAFTA country.

Suspension of Part II

77.038 The operation of Part II is suspended during the period in which this Part is in force.

PART II

DISPUTE SETTLEMENT RESPECTING GOODS OF THE UNITED STATES

Interpretation

Definitions

77.1 (1) In this Part,

"American Secretary"

"secrétaire américain"

"American Secretary" means the secretary of the United States section of the Secretariat provided for by Article 1909 of the Free Trade Agreement;

"appropriate authority"

"autorité compétente"

"appropriate authority", in relation to a definitive decision, means either the Deputy Minister or the Tribunal, according to which made the decision;

"committee"

"comité"

"committee" means an extraordinary challenge committee appointed pursuant to Section 77.18;

"definitive decision"

"décisions..."

"definitive decision" means

(a) a final determination of the Deputy Minister under paragraph 41(1)(a),

(b) a decision of the Deputy Minister under paragraph 41(1)(b) to cause an investigation to be terminated,

(c) an order or finding of the Tribunal under Subsection 43(1),

(d) a decision of the Deputy Minister under Subsection 53(1) to renew or not to renew an undertaking,

(e) a re-determination of the Deputy Minister under Subsection 59(1),

(f) a re-determination of the Deputy Minister under Subsection 59(3),

(g) an order of the Tribunal under Subsection 76(3.1),

(h) an order of the Tribunal under Subsection 76(4),

(i) an order or finding of the Tribunal under Subsection 76(4.1) respecting a review pursuant to Subsection 76(2.1), or

(i.1) an order or finding of the Tribunal under paragraph 76.1(2)(b) or (c);

(j) an order or finding of the Tribunal under Subsection 91(3)

that applies to or in respect of particular goods of the United States, but does not include any such determination, redetermination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Canada or the Supreme Court of Canada relating to those goods;

"Minister"

"ministre"

"Minister" means the Minister for International Trade;

"panel"

"groupe..."

"panel" means a panel appointed pursuant to Section 77.13;

"rules"

"règles"

"rules" means the rules of procedure, as amended from time to time, made pursuant to Chapter Nineteen of the Free Trade Agreement;

"Secretariat"

"secrétariat"

Secretariat means the Canadian Secretariat established by Section 77.23.

Inconsistency

(2) In the event of any inconsistency between the provisions of this Part and the provisions of the Federal Court Act, the provisions of this Part prevail to the extent of the inconsistency.

Request for Review

Request for review of definitive decision

77.11 (1) The Minister or the United States Government may request, in accordance with paragraph 4 of Article 1904 of the Free Trade Agreement, that a definitive decision be reviewed by a panel.

Idem

(2) On a request made to the Canadian Secretary by any person who, but for Section 77.12, would be entitled to apply under Section 28 of the Federal Court Act or Section 96.1 of this Act or to appeal under Section 61 of this Act in respect of a definitive decision, the Minister shall request, in accordance with paragraph 4 of Article 1904 of the Free Trade Agreement, that the definitive decision be reviewed by a panel.

Limitation period

(3) No request shall be made to the Canadian Secretary under Subsection (2) more than 25 days after the day on which notice of the definitive decision is published in the Canada Gazette or, in the case of a re-determination of the Deputy Minister under Subsection 59(1) or (3), the day on which notice of the re-determination is received by the United States Government.

Grounds for request

(4) A request by the Minister for the review of a definitive decision may be made only on a ground set forth in Subsection 28(1) of the Federal Court Act.

Notification of request for review

(5) On receiving a request under this section made by the Minister, the Canadian Secretary shall notify the American Secretary of the request and the day on which it was received by the Canadian Secretary, and on receiving a request under this section made by the United States Government, the Canadian Secretary shall notify the Minister of the request and the day on which it was received by the Canadian Secretary.

No application or appeal

(6) Where a request is made by the Minister or the United States Government for the review of a definitive decision by a panel, no person or government may apply under Section 18 or 28 of the Federal Court Act or Section 96.1 of this Act or appeal under Section 61 of this Act in respect of the decision.

Applications and appeals

77.12 (1) No person or government may apply under Section 18 or 28 of the Federal Court Act or Section 96.1 of this Act or appeal under Section 61 of this Act in respect of a definitive decision:

(a) before the expiration of the limitation period established by paragraph 4 of Article 1904 of the Free Trade Agreement for requesting a review of the decision; and

(b) unless the person or government has, within 20 days after the day on which that limitation period commences, given notice of the intention to make such an application or appeal in writing to the Canadian Secretary and the American Secretary and in the prescribed manner to any other person who, but for this Section, would be entitled to so apply or appeal.

Limitation period extended

(2) For the purpose of permitting a government or person to apply under Section 28 of the Federal Court Act or Section 96.1 of this Act in respect of a definitive decision after the expiration of the limitation period established by paragraph 4 of Article 1904 of the Free Trade Agreement for requesting a review of the decision, the 10-day limitation period referred to in Subsection 28(2) of the Federal Court Act and Subsection 96.1(3) of this Act is extended by 30 days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences.

Establishment of Panels

Appointment of panel

77.13 (1) On a request under Section 77.11 for the review of a definitive decision by a panel, a panel shall be appointed for that purpose in accordance with paragraphs 1 to 4 of Annex 1901.2 to Chapter Nineteen of the Free Trade Agreement and any regulations made in connection therewith.

Single panel

(2) Where a request is made for the review of a final determination of the Deputy Minister under paragraph 41(1)(a) that applies to or in respect of particular goods of the United States and another request is made for the review of an order or finding of the Tribunal under Subsection 43(1) that applies to or in respect of those goods, one panel may, with the consent of the Minister and the United States Government, be appointed to review the final determination and the order or finding.

Administrative record forwarded

77.14 On the appointment of the members of a panel to review a definitive decision, the appropriate authority shall cause a copy of the administrative record to be forwarded in accordance with the rules.

Review by Panel

Conduct of review

77.15 (1) A panel shall conduct a review of a definitive decision in accordance with Chapter Nineteen of the Free Trade Agreement and the rules.

Powers of panel

(2) A panel has such powers, rights and privileges as are conferred on it by the regulations.

Disposition after review

(3) On completion of the review of a definitive decision, a panel shall determine whether the grounds on which the review was requested have

been established and shall make an order confirming the decision or referring the matter back to the appropriate authority for reconsideration within the period specified by the panel.

Review of action of appropriate authority

(4) A panel may, on its own initiative or on a request made in accordance with the rules, review the action taken by the appropriate authority pursuant to an order under Subsection (3) and make a further order as described in that Subsection within ninety days after the day on which the Canadian Secretary receives notice of the action.

Decision

(5) A decision of a panel shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the panel, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made pursuant to Subsection (3) or (4) to the Minister, the United States Government, the appropriate authority and any other person who was heard in the review and shall cause notice of the decision to be published in the Canada Gazette.

Action on Decision of Panel

Action by appropriate authority

77.16 (1) Where a panel makes an order under Subsection 77.15(3) or (4) referring a matter back to the appropriate authority for reconsideration, the appropriate authority shall, within the period specified by the panel, take action under this Act not inconsistent with the decision of the panel.

Appropriate authority not required to act twice

(2) Notwithstanding any other provision of this Act, an appropriate authority is not required to act on an order under Subsection 77.15(4), unless it requires the authority to take action that is different from that taken by the authority under the order under Subsection 77.15(3).

Extraordinary Challenge Proceeding

Request for extraordinary challenge proceeding

77.17 (1) Within the period after a panel makes an order under Subsection 77.15(3) or (4) prescribed by the rules, the Minister or the United States Government may request, in writing to the Canadian Secretary, that an extraordinary challenge proceeding be commenced with respect to the order.

Ground for request

(2) A request for an extraordinary challenge proceeding may be made only on a ground set forth in paragraph 13 of Article 1904 of the Free Trade Agreement.

Notification of request for extraordinary challenge proceeding

(3) On receiving a request under this Section made by the Minister, the Canadian Secretary shall notify the American Secretary of the request and the day on which it was received by the Canadian Secretary, and on receiving a request under this Section made by the United States Government, the Canadian Secretary shall notify the Minister of the request and the day on which it was received by the Canadian Secretary.

Appointment of extraordinary challenge committee

77.18 On a request under Section 77.17 for an extraordinary challenge proceeding, an extraordinary challenge committee shall be appointed for

that purpose in accordance with paragraph 1 of Annex 1904.13 to Chapter Nineteen of the Free Trade Agreement and any regulations made in connection therewith.

Conduct of extraordinary challenge proceeding

77.19 (1) A committee shall conduct an extraordinary challenge proceeding and make a decision in accordance with Annex 1904.13 to Chapter Nineteen of the Free Trade Agreement and the rules.

Powers of committee

(2) A committee has such powers, rights and privileges as are conferred on it by the regulations.

New panel

(3) Where an order of a panel is set aside by a committee, a new panel shall, in accordance with this Part, be appointed and conduct a review of the definitive decision that was the subject of that order.

Action by panel

(4) Where an order of a panel is referred back to the panel by a committee, the panel shall take action not inconsistent with the decision of the committee.

Decision

(5) A decision of a committee shall be recorded in writing and shall include the reasons for the decision and any dissenting or concurring opinions of members of the committee, and the Canadian Secretary shall forward, by registered mail, a copy thereof and of the order made by the committee to the Minister, the United States Government, the appropriate authority and

any other person who was heard in the proceeding and shall cause notice of the decision to be published in the Canada Gazette.

Orders and decisions final

77.2 (1) Subject to Subsection 77.15(4) and Section 77.17, an order or decision of a panel or committee is final and binding and is not subject to appeal.

No review

(2) Subject to Subsection 77.15(4) and Section 77.17, no order, decision or proceeding of a panel or committee made or carried on under, or purporting to be made or carried on under, this Act shall be:

(a) questioned, reviewed, set aside, removed, prohibited or restrained, or

(b) made the subject of any proceedings in, or any process or order of, any court, whether by way of or in the nature of injunction, certiorari, prohibition, quo warranto, declaration or otherwise,

on any ground, including the ground that the order, decision or proceeding is beyond the jurisdiction of the panel or committee to make or carry on or that, in the course of any proceeding, the panel or committee for any reason exceeded or lost jurisdiction.

No references

(3) Subsection 28(4) of the Federal Court Act does not apply to a panel or committee.

Members

Code of conduct

77.21 (1) Every member of a panel and every member of a committee shall comply with the code of conduct, as amended from time to time, established pursuant to Article 1910 of the Free Trade Agreement.

Disclosure undertaking respecting confidential information

(2) Every member of a panel and every prescribed person shall sign and comply with a disclosure undertaking, in the prescribed form, respecting the disclosure and use of confidential, personal, business proprietary and other privileged information made available to the member or person in proceedings under this Part.

Immunity

(3) Subject to Section 77.26, no action or other proceeding lies or shall be commenced against a member of a panel for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, under this Part.

Remuneration and expenses of panel members

77.22 Every member of a panel shall be paid such remuneration and is entitled to such travel and living expenses incurred in the performance of the member's duties under this Part as are fixed by the Canada-United States Trade Commission established pursuant to the Free Trade Agreement.

Secretariat

Establishment of Canadian Secretariat

77.23 There is hereby established a secretariat, to be called the Canadian Secretariat, for the purpose of facilitating the implementation of Chapter Nineteen of the Free Trade Agreement and the work of panels and committees.

Secretary

77.24 (1) There shall be a Secretary of the Secretariat to be appointed by the Governor in Council, on the recommendation of the Minister, to hold office for a term not exceeding five years.

Salary and expenses

(2) The Canadian Secretary shall be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

Absence or incapacity of Secretary

(3) In the event of the absence or incapacity of the Canadian Secretary or if the office of Canadian Secretary is vacant, the Governor in Council may appoint another person, on such terms and conditions as the Governor in Council deems appropriate, to act as Canadian Secretary and a person so acting shall have all the powers, duties and functions of the Canadian Secretary under this Part and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

Superannuation

(4) The provisions of the Public Service Superannuation Act, other than those related to tenure of office, apply to the Canadian Secretary, except that a person appointed as Canadian Secretary from outside the Public Service may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the Diplomatic Service (Special) Superannuation Act, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Canadian Secretary from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

Chief executive officer

(5) The Canadian Secretary is the chief executive officer of the Secretariat and has supervision over and direction of the work and staff of the Secretariat.

Staff

77.25 Such officers, clerks and employees as are required for the proper conduct of the work of the Secretariat shall be appointed in accordance with the Public Service Employment Act.

Offence

Offence

77.26 (1) Every person commits an offence who contravenes or fails to comply with:

(a) a disclosure undertaking under Subsection 77.21(2);

(b) the rules respecting the disclosure and use of confidential, personal, business proprietary or other privileged information; or

(c) a protective order covering business proprietary and other privileged information made under the American law giving effect to the Free Trade Agreement.

Punishment

(2) Every person who commits an offence under Subsection (1)

(a) is guilty of an indictable offence and liable to a fine not exceeding one million dollars; or

(b) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding 100,000 dollars.

Consent

(3) No proceedings for an offence under this Section shall be instituted without the consent in writing of the Attorney General of Canada.

Regulations

Regulations

77.27 The Governor in Council may, on the recommendation of the Minister and the Minister of Finance, make regulations:

(a) conferring on a panel or committee such powers, rights and privileges as the Governor in Council deems necessary for giving effect to Chapter Nineteen of the Free Trade Agreement and the rules, including powers, rights and privileges of a superior court of record;

(b) authorizing a designated officer, or an officer of a designated class of officers, employed in or occupying a position of responsibility in the service of Her Majesty to perform duties or functions of the Minister under this Part;

(c) for carrying out and giving effect to paragraphs 1 to 4 of Annex 1901.2, and paragraph 1 of Annex 1904.13, to Chapter Nineteen of the Free Trade Agreement; and

(d) generally for carrying out the purposes and provisions of this Part.

Publication in Canada Gazette

77.28 The rules, the code of conduct established pursuant to Article 1910 of the Free Trade Agreement and any amendments made to the rules or code shall be published in the Canada Gazette.

Application of Acts

Application

77.29 No provision

(a) of an Act to amend this Act,

(b) of any other Act of Parliament respecting the imposition of anti-dumping or countervailing duties, or

(c) amending a provision of an Act of Parliament providing for judicial review of a definitive decision or setting forth the grounds for such a review

that comes into force after the coming into force of this Section shall be applied in respect of goods of the United States, unless it is expressly declared by an Act of Parliament that the provision applies in respect of goods of the United States.

PART III

GENERAL

Provision of Evidence to Deputy Minister

Deputy Minister may require evidence to be provided

78. (1) Where:

(a) in any investigation under this Act respecting the dumping or subsidizing of goods, or

(b) in relation to the sale of:

(i) any goods to an importer in Canada, or

(ii) any goods located or in the course of production out of Canada,

that are of the same description as goods to which an order or finding of the Tribunal described in Sections 3, 5 or 6 applies and that will or may be imported into Canada,

the Deputy Minister believes on reasonable grounds that any person in Canada is able to provide evidence relevant to the investigation or to the making, for the purpose of facilitating the administration or enforcement of this Act, of an estimate of the duty that will or may be payable on the goods when imported into Canada, the Deputy Minister may, by notice in writing, require the person to provide the Deputy Minister, under oath or otherwise, with the evidence referred to in the notice.

Notice to provide evidence

(2) Where, by notice given pursuant to Subsection (1), the Deputy Minister requires any person to provide evidence, he shall:

(a) include in the notice sufficient information for the person to identify the evidence;

(b) specify in the notice the time within which and the manner and form in which the evidence is to be provided; and

(c) include with the notice a copy or summary of this Section and Sections 82 to 85.

Evidence or statement to be provided

(3) Where a person is required by notice given pursuant to Subsection (1) to provide the Deputy Minister with evidence, the person shall:

(a) if it is reasonably practicable for the person to do so, provide the evidence in accordance with the notice;

(b) if it is reasonably practicable for the person to provide a part only of the evidence in accordance with the notice:

(i) so provide that part of the evidence, and

(ii) provide the Deputy Minister with a written statement under oath identifying the remainder of the evidence and specifying the reason why it is not reasonably practicable for the person to provide the remainder of the evidence in accordance with the notice; and

(c) if it is not reasonably practicable for the person to provide the evidence in accordance with the notice, provide the Deputy Minister with a statement under oath so stating and specifying the reason why it is not reasonably practicable to so provide the evidence.

No oral evidence

(4) Nothing in this Section shall be construed as authorizing the Deputy Minister to require any person to provide evidence orally.

Extension of time

(5) Where, pursuant to paragraph (2)(b), the Deputy Minister specifies the time within which evidence is to be provided, the Deputy Minister may, either before or after the expiration of that time, extend the time within which the evidence is to be provided. 1984, C. 25, S. 78.

Designation of evidence as confidential

79. (1) Where a person who provides the Deputy Minister with evidence pursuant to Subsection 78(3) wishes some or all of the evidence to be kept confidential, the person shall submit, at the time the evidence is provided, a statement designating as confidential the evidence that he wishes to be kept confidential, together with an explanation of why he designated that evidence as confidential.

Summary or statement to be provided

(2) Where, pursuant to Subsection (1), a person submits to the Deputy Minister a statement designating evidence as confidential, together with the explanation referred to in that Subsection, the person shall submit to the Deputy Minister, at the same time, a summary of the evidence designated as confidential in sufficient detail to convey a reasonable understanding of the evidence. 1984, C. 25, S. 79.

Collection of Duty

80. [Repealed, R.S., 1985, C. 1 (2nd Supp.), S. 209]

Recovery of duties from person other than importer

81. (1) Notwithstanding anything in this Act, where any duty payable under this Act in respect of goods has not been paid within thirty days after a demand for payment of the duty has been made pursuant to this Act, the Minister may, by notice in writing, require any person in Canada to whom the goods are sold to pay a sum in respect of the duty not exceeding the amount of the duty payable in respect of the goods sold to that person, which sum is, after the notice has been given, a debt due and payable to Her Majesty by that person and may be recovered at any time by action in any court of competent jurisdiction, together with costs of the action.

Recourse under Customs Act

(2) Where an amount that is less than the duty payable in respect of goods imported into Canada is recovered from a person pursuant to Subsection (1), such recovery is without prejudice to any recourse available to Her Majesty under the Customs Act with respect to the remainder of the duty payable.

Disclosure of Information

Definition of "information"

82. In Sections 83 to 87, "information" includes evidence.

Information to be disclosed

83. Where information is provided to the Deputy Minister for the purposes of any proceedings under this Act, every party to the proceedings has, unless the information is information to which Subsection 84(1) applies, a right, on request, to examine the information during normal business hours and a right, on payment of the prescribed fee, to be provided with copies of any such information that is in documentary form or that is in any other form in which it may be readily and accurately copied.

Information to be disclosed

83.1 Where information is provided to the Deputy Minister for the purposes of any proceedings under this Act in respect of goods of a NAFTA country, the Deputy Minister shall, on receipt of a request from the government of that NAFTA country, provide that government with copies of any such information that is requested that is in documentary form or that is in any other form in which it may be readily and accurately copied, unless the information is information to which Subsection 84(1) applies.

Information not to be disclosed

84. (1) Where a person:

(a) designates information as confidential pursuant to paragraph 85(1)(a), or

(b) submits to the Deputy Minister, with respect to evidence, in this Section referred to as "information", provided by him pursuant to Subsection 78(3), the statement and explanation referred to in Subsection 79(1),

and that designation or submission, as the case may be, is not withdrawn by the person, no person employed in the public service of Canada who comes into possession of that information while he is so employed shall, either before or after he ceases to be so employed, knowingly disclose that information, or knowingly allow it to be disclosed, to any other person in any manner that is calculated or likely to make it available for the use of any business competitor or rival of any person to whose business or affairs the information relates.

Disclosure of summary or statement

(2) Subsection (1) does not apply in respect of any summary of information or statement referred to in paragraph 85(1)(b) or any summary referred to in Subsection 79(2).

Disclosure to counsel

(3) Notwithstanding Subsection (1), information to which that Subsection applies that has been provided to the Deputy Minister in any proceedings under this Act may be disclosed by the Deputy Minister to counsel for any party to those proceedings or to other proceedings under this Act arising out of those proceedings for use by that counsel only in those proceedings or other proceedings, subject to such conditions as the Deputy Minister considers are reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who

submitted it to the Deputy Minister, be disclosed to any person by counsel in any manner that is calculated or likely to make it available to:

(a) any party to the proceedings or other proceedings, including a party who is represented by that counsel; or

(b) any business competitor or rival of any person to whose business or affairs the information relates.

Definition of "counsel"

(4) In Subsection (3), "counsel", in relation to a party to proceedings under this Act, includes any person, other than a director, servant or employee of the party, who acts in the proceedings on behalf of the party.

Designation of information as confidential

85. (1) Where a person who provides information to the Deputy Minister for the purposes of proceedings under this Act wishes some or all of the information to be kept confidential, the person shall submit, at the time the information is provided,

(a) a statement designating as confidential the information that he wishes to be kept confidential, together with an explanation of why he designated that information as confidential; and

(b) a non-confidential edited version or non-confidential summary of the information designated as confidential pursuant to paragraph (a) in sufficient detail to convey a reasonable understanding of the substance of the information or a statement:

(i) that such a non-confidential edited version or non-confidential summary cannot be made, or

(ii) that such a non-confidential edited version or non-confidential summary would disclose facts that the person has a proper reason for wishing to keep confidential,

together with an explanation that justifies the making of any such statement.

Interpretation

(2) A person who designates information as confidential pursuant to paragraph (1)(a) fails to comply with paragraph (1)(b) where:

(a) the person does not provide a non-confidential edited version, a non-confidential summary or a statement referred to in paragraph (1)(b);

(b) the person provides a non-confidential edited version or a non-confidential summary of the information designated as confidential pursuant to paragraph (1)(a), but the Deputy Minister is satisfied that it does not comply with paragraph (1)(b);

(c) the person provides a statement referred to in paragraph (1)(b), but does not provide an explanation that justifies the making of the statement; or

(d) the person provides a statement referred to in paragraph (1)(b), but the Deputy Minister is satisfied that the explanation given as justification for the making of the statement does not justify the making thereof.

Where there has been failure to comply

86.1 (1) Where a person has designated information as confidential pursuant to paragraph 85(1)(a) and the Deputy Minister considers that the designation is warranted, but the person has failed to comply with paragraph 85(1)(b), the Deputy Minister shall cause the person to be informed of that failure, of the ground on which he has so failed and of the application of Subsection 87(3) if the person fails to take, within the time

limited therefor by or pursuant to that Subsection, such action as it is necessary for him to take in order to comply with paragraph 85(1)(b).

Where Deputy Minister considers designation unwarranted

(2) Where, pursuant to paragraph 85(1)(a), a person has designated information as confidential and the Deputy Minister considers that, because of its nature, extent, availability from other sources or the failure of the person to provide any explanation of why he designated it as confidential, the designation of that information as confidential is unwarranted, the Deputy Minister shall cause the person

(a) to be notified of the fact that the Deputy Minister considers the designation of that information as confidential unwarranted and of the Deputy Minister's reasons for so considering; and

(b) where the person has failed to comply with paragraph 85(1)(b), to be informed as provided in Subsection (1).

Withdrawal of designation or submission of explanation

87. (1) Where a person is notified pursuant to paragraph 86(2)(a) with respect to any information that he has designated as confidential pursuant to paragraph 85(1)(a), the person may, within 15 days after being so notified:

(a) withdraw the designation, or

(b) submit to the Deputy Minister an explanation or further explanation of why he designated the information as confidential,

and where the person does neither of those things within the 15 days, that information shall not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, unless the Deputy Minister obtains it elsewhere than from that person.

Deputy Minister to reconsider

(2) Where, pursuant to Subsection (1), a person submits to the Deputy Minister, within the 15 days referred to in that Subsection, an explanation or further explanation of why the person designated information as confidential, the Deputy Minister shall again consider whether, taking into account that explanation or further explanation, the designation of the information as confidential is warranted and, if the Deputy Minister decides that it is not warranted, shall cause the person to be notified that the information will not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, in which case the information shall not thereafter be taken into account by the Deputy Minister in any such proceedings, unless he obtains it elsewhere than from that person.

Where failure to comply not rectified

(3) Subject to Subsection (4), where a person who has been informed pursuant to Section 86 that he has failed to comply with paragraph 85(1)(b) with respect to any information does not, within 15 days after being so informed or within such longer time not exceeding 30 days after being so informed as the Deputy Minister, either before or after the expiration of the 15 days, in his discretion allows, take such action as it is necessary for the person to take in order to comply with paragraph 85(1)(b) the Deputy Minister shall cause the person to be notified that the information will not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, in which case the information shall not thereafter be taken into account by the Deputy Minister in any such proceedings, unless he obtains it elsewhere than from that person.

Exception

(4) Subsection (3) does not apply in respect of any information that the Deputy Minister is prohibited by Subsection (1) or (2) from taking into account in the proceedings for the purposes of which it was provided.

Application of Sections 86 and 87

88. Sections 86 and 87 do not apply in respect of evidence submitted to the Deputy Minister pursuant to Subsection 78(3).

Ruling on Who is Importer

Request for ruling on who is importer in Canada

89. (1) Where a question arises or is raised as to which of two or more persons is, for the purposes of this Act, the importer in Canada of goods imported or to be imported into Canada on which duty is payable or has been paid or will be payable if the goods are imported, the Deputy Minister may, and at the request of any person interested in the importation of the goods shall, request the Tribunal for a ruling on that question, unless, in the case goods that have been imported into Canada,

(a) A determination has been made pursuant to Section 55 or Section 56(1) with respect to the goods; and

(b) more than 90 days have elapsed since the determination referred to in paragraph (a) was made.

Where the Deputy Minister makes a request under Subsection for a ruling on the question referred to therein, the Deputy Minister shall:

(a) State in the request which of the two or more persons the Deputy Minister believes is the importer in Canada of the goods;

(b)if any of the goods is of the same description as the goods specified in a preliminary determination made in an investigation that was initiated pursuant to Section 31 and is still continuing, so state in the request;

(c)provide the Tribunal with such information as the Deputy Minister considers will be useful to it in considering the investigation and with such other information as the Tribunal may request; and

(d)give notice of his request to such persons as the rules of the Tribunal require or as the Tribunal may require.

Investigation deemed to continue

Where, in any investigation, the Deputy Minister makes a final determination of dumping or subsidizing under Subsection 41(1) in respect of any goods, the investigation shall, for the purpose of paragraph (2)(b), be deemed to continue until such time as the Tribunal makes an order or finding in respect of the goods.

Tribunal's ruling

90. Where a request is made to the Tribunal under Subsection 89(1) for a ruling on the question referred to therein, the Tribunal:

(a)shall arrive at its ruling on the question by determining which of the two or more persons is the importer in Canada of the goods;

(b)subject to paragraph (c), shall give its ruling on the question forthwith after receiving the request therefor; and

(c)shall not, if a statement pursuant to paragraph 89(2)(b) is made in the request, give its ruling on the question until after it makes an order or finding in the inquiry commenced as a consequence of the receipt by the Secretary of notice of the preliminary determination referred to in that paragraph, unless, after the request is made to the Tribunal, the Secretary

receives notice pursuant to Subsection 41(4) that the investigation has been terminated pursuant to Subsection 41(1) in respect of the goods specified in the preliminary determination, in which case the Tribunal shall give its ruling on the question forthwith after the Secretary receives that notice.

Rules

91. (1) Where:

(a) a request is made to the Tribunal pursuant to Subsection 89(1) for a ruling on the question referred to therein,

(b) a statement pursuant to paragraph 89(2)(b) is made in the request, and

(c) the Tribunal's ruling on the question is that the importer in Canada of the goods is a person other than the person specified as such by the Deputy Minister pursuant to paragraph 89(2)(a),

the following rules apply:

(d) as soon as possible after the Tribunal gives its ruling on the question, the Deputy Minister shall:

(i) reconsider any final determination of dumping or subsidizing made pursuant to Subsection 41(1) with respect to the goods specified in the preliminary determination and shall confirm the final determination, rescind it or make amendments to it, as is appropriate in the circumstances, and

(ii) cause notice of the action taken by the Deputy Minister pursuant to subparagraph (i) to be given to prescribed persons and governments, published in the Canada Gazette and filed with the Secretary in writing;

(e) where the Deputy Minister rescinds a final determination pursuant to paragraph (d), Section 41 shall again apply in respect of the goods to which the final determination applied as if that Section had not previously applied

in respect of those goods, except that the action that the Deputy Minister is required by that Section to take shall, notwithstanding anything therein, be taken by the Deputy Minister within 60 days after the Tribunal gives its ruling on the question;

(f) where the Deputy Minister has caused the investigation referred to in paragraph 89(2)(b) to be terminated pursuant to Subsection 41(1) with respect to the goods specified in the preliminary determination, the Tribunal shall be deemed to have directed the Deputy Minister, by notice in writing pursuant to Section 46, to cause an investigation to be initiated respecting the dumping or subsidizing of those goods and the Deputy Minister shall, pursuant to Subsection 31(2), forthwith cause such an investigation to be commenced; and

(g) the Tribunal may, on its own initiative or at the request of the Deputy Minister or any person interested but subject to Subsection (2), reconsider, under the authority of this paragraph, any order or finding made by it in the inquiry referred to in paragraph 90(c) and, in so reconsidering, may rehear any matter before deciding it.

Limitation on reconsideration of order or finding

(2) The Tribunal shall not commence reconsideration of an order or finding under the authority of paragraph (1)(g):

(a) later than 90 days after the making of the ruling on the question referred to in paragraph (1)(a); or

(b) at the request of any person unless that person satisfies the Tribunal that reconsideration of the order or finding is warranted.

Completion of reconsideration

(3) Where the Tribunal reconsiders an order or finding under the authority of paragraph (1)(g):

(a) the Tribunal shall complete the reconsideration forthwith and, in any event, not later than 90 days after the day on which it decides to commence it and, on completion thereof, shall confirm the order or finding or rescind it and make such other order or finding with respect to the goods to which the order or finding under reconsideration applies as the nature of the matter may require, and, where it makes another order or finding, shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies;

(b) the Secretary shall forward by registered mail to the Deputy Minister, the importer, the exporter and such other persons and governments as may be specified by the rules of the Tribunal:

(i) forthwith after the reconsideration is completed, notice of the action taken pursuant to paragraph (a) with respect to the order or finding and, where another order or finding has been made pursuant to that paragraph, a copy of that other order or finding, and

(ii) not later than 15 days after the completion of the reconsideration, a copy of the reasons for the action taken thereon; and

(c) where the Tribunal makes another order or finding pursuant to paragraph (a), the Secretary shall cause notice of the order or finding to be published in the Canada Gazette.

Separate order or finding

(4) Where a reconsideration under the authority of paragraph (1)(g) involves goods of the United States as well as goods of other countries and the Tribunal makes another order or finding under paragraph (3)(a), the Tribunal shall make a separate order or finding under that paragraph with respect to the goods of the United States.

Determination pursuant to Section 55

92. A determination made pursuant to Section 55 in respect of any imported goods on the basis that the importer of the goods was a person who is subsequently ruled by the Tribunal not to have been the importer thereof shall be deemed not to have been made and, for the purpose of that Section, the date of the order or finding of the Tribunal with respect to goods that appear to be of the same description as the imported goods shall be deemed to be:

(a) where, following its ruling, the Tribunal reconsiders the order or finding pursuant to paragraph 91(1)(g) and confirms it, the date on which the Tribunal confirms the order or finding;

(b) where, following its ruling, the Tribunal reconsiders the order or finding pursuant to paragraph 91(1)(g) and rescinds it and makes another order or finding with respect to goods of that description, the date of the other order or finding; and

(c) in any other case, the date of the Tribunal's ruling.

Determination pursuant to Section 56, 57 or 59

93. A determination or re-determination made pursuant to Section 56, 57 or 59 in respect of any goods on the basis that the importer of the goods was a person who is subsequently ruled by the Tribunal not to have been the importer thereof shall be deemed not to have been made and the goods shall, for the purposes of Section 56, be deemed to be accounted for on the earlier of:

(a) the day that is 60 days after the day on which the Tribunal made the ruling; and

(b) the day on which a new determination is made pursuant to Section 56 in respect of the goods.

Ruling binding

94. A ruling given by the Tribunal on the question of who is the importer in Canada of any goods imported or to be imported into Canada is binding on the Deputy Minister, and on every person employed by the Department of National Revenue in the administration or enforcement of this Act, with respect to the particular goods in relation to which the ruling is given, unless the Tribunal is fraudulently misled or, in the case only of goods to be imported into Canada, material facts that are not available to the Deputy Minister at the time the Tribunal gives its ruling come to the Deputy Minister's attention after it is given.

Deputy Minister to provide name of importer

95. Where any person interested in the importation of goods into Canada requests the Deputy Minister to provide the person with the name of the importer of the goods, the Deputy Minister shall, except in prescribed circumstances, forthwith provide the person with the name of the importer.

Gathering of Information

Deputy Minister may gather information in advance

96. In order to facilitate the administration and enforcement of this Act, where the Deputy Minister believes that goods sold to an importer in Canada or goods located or in the course of production out of Canada are or may be of the same description as goods to which an order or finding of the Tribunal described in Sections 3, 5 or 6 applies and that they will or may be imported into Canada, the Deputy Minister may, for the purpose of estimating the margin of dumping of or the amount of subsidy on the goods before they are imported into Canada, seek from persons in or out of Canada, in such manner and form as he considers appropriate in the circumstances, such information as he believes will be useful for that purpose.

Application for Review

Application for judicial review

96.1 (1) Subject to Section 77.012 or 77.12, an application may be made to the Federal Court of Appeal to review and set aside:

- (a) a final determination of the Deputy Minister under paragraph 41(1)(a);
- (b) a decision of the Deputy Minister under paragraph 41(1) (b) to cause an investigation to be terminated;
- (c) a decision of the Deputy Minister under Subsection 53(1) to renew or not to renew an undertaking;
- (d) an order of the Tribunal under Subsection 76(3.1);
- (e) an order of the Tribunal under Subsection 76(4);
- (f) an order or finding of the Tribunal under Subsection 76(4.1) respecting a review pursuant to Subsection 76(2.1); or
- (g) an order or finding of the Tribunal under Subsection 91(3).

Grounds of application

(2) An application may be made under this Section on the ground that the Deputy Minister or the Tribunal, as the case may be,

- (a) acted without jurisdiction, acted beyond the jurisdiction of the Deputy Minister or the Tribunal or refused to exercise that jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that the Deputy Minister or the Tribunal was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based a decision or order on an erroneous finding of fact that the Deputy Minister or the Tribunal made in a perverse or capricious manner or without regard for the material before the Deputy Minister or the Tribunal;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

Filing of application

(3) Subject to Subsection 77.012(2), an application may be made under this Section by any person directly affected by the determination, decision, order or finding by filing a notice of the application in the Federal Court of Appeal within 30 days after the time the determination, decision, order or finding was first communicated to that person by the Deputy Minister or the Tribunal, or within such further time as the Federal Court of Appeal or a judge thereof may, before or after the expiration of those 30 days, fix or allow.

Trial Division deprived of jurisdiction

(4) Where the Federal Court of Appeal has jurisdiction under this Section to hear and determine an application to review and set aside a determination, decision, order or finding, the Trial Division has no jurisdiction to entertain any proceeding in respect of that determination, decision, order or finding.

Hearing in summary way

(5) An application under this Section shall be heard and determined without delay and in a summary way in accordance with the rules made in respect of applications for judicial review pursuant to Sections 18.1 and 28 of the Federal Court Act.

Disposition

(6) On an application under this Section, the Federal Court of Appeal may dismiss the application, set aside the final determination, decision, order or finding, or set aside the final determination, decision, order or finding and refer the matter back to the Deputy Minister or the Tribunal, as the case may be, for determination in accordance with such directions as it considers appropriate.

No references

96.11 (1) Subsection 18.3(1) of the Federal Court Act does not apply to the Deputy Minister or the Tribunal in respect of proceedings under this Act relating to goods of a NAFTA country.

Suspension of S. 96.2

(2) The operation of Section 96.2 is suspended during the period in which Subsection (1) is in force.

No references

96.2 Subsection 18.3(1) of the Federal Court Act does not apply to the Deputy Minister or the Tribunal in respect of proceedings under this Act relating to goods of the United States.

Request for review of final determination

96.21 (1) The Minister for International Trade may, in the manner provided for by the law of a NAFTA country giving effect to the North American

Free Trade Agreement, request that a final determination be reviewed by a panel established under that law.

Idem

(2) Any person who, but for the law of a NAFTA country giving effect to the North American Free Trade Agreement, would be entitled under the law of that NAFTA country to commence domestic proceedings for judicial review of a final determination may file with the Canadian Secretary a request that the final determination be reviewed by a panel established under that law.

Deeming

(3) A request under Subsection (2) shall be deemed to be a request by the Minister for binational review within the meaning of paragraph 4 of Article 1904 of the North American Free Trade Agreement.

Limitation period

(4) A request under Subsection (1) or (2) may only be made within 30 days after the day on which notice of the final determination is published in the official publication of the NAFTA country, or, in the case of a final determination of which notice is not so published, within 30 days after the day on which notice of the final determination is received by the Minister.

Definition of "final determination"

(5) In this Section, "final determination" means a final determination as defined in Annex 1911 of the North American Free Trade Agreement.

Suspension of s. 96.3

(6) The operation of Section 96.3 is suspended during the period in which this Section is in force.

Request for review of final determination

96.3 (1) The Minister for International Trade may, in the manner provided for by the American law giving effect to the Free Trade Agreement, request that a final determination be reviewed by a panel established under that law.

Idem

(2) On a request made to the Canadian Secretary by any person who, but for the American law giving effect to the Free Trade Agreement, would be entitled under American law to commence domestic proceedings for judicial review of a final determination, the Minister for International Trade shall, in the manner provided for by the American law giving effect to the Free Trade Agreement, request that the final determination be reviewed by a panel established under that law.

Limitation period

(3) No request shall be made to the Canadian Secretary under Subsection (2) more than 25 days after the day on which notice of the final determination is published in the Federal Register or, in the case of a final determination of which notice is not so published, the day on which notice of the final determination is received by the Minister.

Definition of "final determination"

(4) In this Section, "final determination" means a final determination as defined in subparagraph (b) of the definition of that term in Article 1911 of the Free Trade Agreement.

REGULATIONS

Regulations

97. (1) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations:

(a) prescribing anything that by this Act is to be or may be prescribed by regulation;

(a.1) prescribing the factors that may be considered in determining whether the dumping or subsidizing of any goods has caused injury or retardation or is threatening to cause injury;

(b) specifying the circumstances and manner in which:

(i) two or more dumping investigations,

(ii) two or more subsidy investigations, or

(iii) one or more dumping investigations and one or more subsidy investigations,

may be joined and carried on as one and the persons to whom and the manner in which notice of the joining shall be given;

(c) Repealed [Bill C-57]

(d) defining the expression "duty or internal tax" for the purpose of the definition "subsidy" in Subsection 2(1);

(e) defining the expressions "cost of production", "a reasonable amount for administrative, selling and all other costs" and "a reasonable amount for profits" for the purpose of paragraph 19(b) or subparagraph 20(c)(ii)

(e.1) prescribing the manner of calculating the cost of production of goods and the administrative, selling and all other costs with respect to goods;

(f) defining the expression "an amount for profit" for the purpose of subparagraph 25(c)(ii) or 25(d)(i);

(f.1) defining the expression "start-up period of production" for the purposes of Section 23.1, including prescribing the factors to consider in determining the duration of such a period;

(f.2) prescribing, for the purposes of Subsection 30.3(3), the manner for determining a margin of dumping, including prescribing the manner for determining the maximum margin of dumping that can be determined;

(g) defining the expression "person interested" for the purpose of Subsection 45(2) or Section 89 or 95;

(g.1) deeming a government in Canada or the United States to be a person who is entitled to make a request to the Canadian Secretary under Subsection 77.11(2);

(g.11) deeming a government in Canada or in a NAFTA country to be a person who is entitled to make a request to the Canadian Secretary under Subsection 77.011(2);

(g.2) defining the expression "goods of the United States" for the purpose of this Act;

(g.21) defining the expression "goods of a NAFTA country" for the purpose of this Act;

(g.22) determining, in respect of each NAFTA country, which publication shall be deemed to be the official publication of that country for the purpose of this Act;

(h) prescribing the procedure to be followed in an investigation ordered by the Governor in Council under Subsection 7(1);

(i) providing for the selection of an interest rate, from among or by reference to interest rates prevailing in or out of Canada at the time of the sale referred to in Subsection 21(1), by reference to which the determination referred to in paragraph 21(1)(a) shall be made in the circumstances described in Clause 21(1)(a)(ii)(B);

(j) providing for the selection of an interest rate, from among or by reference to interest rates prevailing in or out of Canada at the time of the sale referred to in Subsection 27(1), by reference to which the determination referred to in paragraph 27(1)(a) shall be made in the circumstances described in Clause 27(1)(a)(ii)(B);

(k) providing for the determination of or specifying the date as of which the equivalent dollar value of any amount that is expressed in the currency of a country other than Canada and that is used or taken into account for any purpose in the administration or enforcement of this Act shall be ascertained, determined or calculated;

(k.1) providing for the method of determining the rate of exchange for the purpose of calculating the export price for export sales involving the sale of foreign currency on forward markets;

(k.2) providing for the manner of making adjustments to export prices in situations of sustained movement in the rate of exchange; and

(l) generally, for carrying out the purposes and provisions of this Act.

Regulations prescribing rate of interest

(2) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations prescribing a rate of interest or rules for determining a rate of interest for the purposes of this Act.

RELATED PROVISIONS

- R.S., 1985, C. 41 (3rd supp.), M. 115:

"115. (1) Every order made by the Governor in Council pursuant to Section 7 of the Customs Tariff, chapter C-41 of the Revised Statutes of Canada, 1970, as that Section read immediately before the coming into force of the Special Import Measures Act, that was in force on the day immediately preceding the coming into force of the Special Import Measures Act shall be deemed to have and to have had the same force and effect for the purposes of that Act and shall continue, and be deemed to have continued, in effect as if it were an order or finding described in Section 3 or 4 of that Act and were made pursuant to Section 43 of that Act and that Act shall apply, and shall be deemed to have applied, in respect of the order as if it had been made on the day on which that Act came into force.

(2) For greater certainty, for the purposes of making any review, pursuant to Section 76 of the Special Import Measures Act, of an order referred to in Subsection (1), a review may be made of any report made pursuant to Section 16.1 of the Anti-Dumping Act, chapter A-15 of the Revised Statutes of Canada, 1970, on which the order is based, as if the report were part of the order."

BILL C-57

An Act to implement the Agreement Establishing
the World Trade Organization

Transitional Provisions

187. In this Section and Section 188,

"commencement day"

"date de référence"

"commencement day" means the day on which this Section comes into force;

"new Act"

"nouvelle loi"

"new Act" means the Special Import Measures Act as it read on the commencement day;

"new rules and regulations"

"nouveaux textes d'application"

"new rules and regulations" means rules made under Section 39, and regulations made under Section 40, of the Canadian International Trade Tribunal Act as those Sections read on the commencement day;

"old Act"

"ancienne loi"

"old Act" means the Special Import Measures Act as it read on the day immediately before the commencement day;

"old rules and regulations"

"anciens textes d'application"

"old rules and regulations" means rules made under Section 39, and regulations made under Section 40, of the Canadian International Trade Tribunal Act as those Sections read on the day immediately before the commencement day;

"order or finding"

"ordonnance ou conclusions"

"order or finding" has the same meaning as in Subsection 2(1) of the Special Import Measures Act;

"Tribunal"

"Tribunal"

"Tribunal" means the Canadian International Trade Tribunal established by Subsection 3(1) of the Canadian International Trade Tribunal Act.

Disposition of notified complaints

188. (1) Subject to this Section, where, before the commencement day, notice of a complaint respecting the dumping or subsidizing of goods that is properly documented, within the meaning assigned to that expression by Section 2(1) of the old Act, has been given pursuant to paragraph 32(1)(a) of the old Act, any proceeding, process or action in respect of the goods shall be continued and disposed of in accordance with the old Act and the old rules and regulations.

Proceedings re goods subject to order made after commencement day

(2) Where the Tribunal makes an order or finding pursuant to Subsection 43(1) of the Special Import Measures Act on or after the commencement day with respect to goods that are the subject of a complaint referred to in Subsection (1), any subsequent proceeding, process or action in relation to any of those goods other than:

(a) a judicial review or dispute settlement under Part I.1 or II of the Special Import Measures Act in relation to that order or finding and any proceeding, process or action in relation to the judicial review or dispute settlement,

(b) a proceeding, process or action in relation to any of those goods that were released before the commencement day, or

(c) a proceeding, process or action in relation to any of those goods that were released on or after the commencement day but on or before the day on which the Tribunal made the order or finding

shall be disposed of in accordance with the new Act and the new rules or regulations.

Effect of order or finding

(3) For greater certainty, any order or finding that is in effect on the commencement day shall, for the purposes of Sections 3 to 6 of the new Act, have the same force and effect as if it were made under the new Act.

Review by the Tribunal

(4) A review by the Tribunal under Subsection 76(2) of the Special Import Measures Act of an order or finding in effect on the commencement day shall be disposed of in accordance with:

(a) the old Act and the old rules and regulations, where notice of the initiation of the review has been given before the commencement day; and

(b) the new Act and the new rules and regulations, where notice of the initiation of the review is given on or after the commencement day.

New Act does not justify review

(5) For the purposes of Subsection 76(3) of the Special Import Measures Act, the Tribunal may not be satisfied that a review of an order or finding is warranted by reason only of the coming into force of the new Act and the new rules and regulations.

Determination of normal value, etc., where undertaking

(6) Any determination, on or after the commencement day, of a normal value, export price, amount of subsidy or margin of dumping in relation to any goods that are subject to an undertaking accepted before the commencement day shall be made in accordance with the new Act.

Determination of normal value, etc.

(7) A normal value, export price, amount of subsidy or margin of dumping determined in relation to goods under the old Act shall, for the purposes of goods released on or after the commencement day, other than goods to which paragraph (2)(c) applies, be deemed to have been made under the new Act.

Re-determination of normal value, etc.

(8) A re-determination of a normal value, export price, amount of subsidy or margin of dumping referred to in Subsection (7) shall be made in accordance with the new Act.

Application

Application to goods from a NAFTA country

189. Sections 144 to 1881, any provision of the Special Import Measures Act as enacted by any of those Sections, or any rule or regulation made under the Special Import Measures Act as amended as a result of the Agreement and any regulations under Subsection 13(2) of the Customs Tariff, to the extent that they apply for the purposes of the Special Import Measures Act, apply to goods from a NAFTA country, within the meaning assigned to that expression by Subsection 2(1) of the Special Import Measures Act.

Canadian International
Trade Tribunal Act

DEPARTMENT OF JUSTICE
OFFICE CONSOLIDATION
(UNOFFICIAL)

DEPARTMENT OF JUSTICE,
GOVERNMENT OF CANADA

September 1995

CHAPTER C-18.3

[R.S., 1985, c. 47 (4th Supp.)]

An Act to establish the Canadian International Trade Tribunal and to amend
or
repeal other Acts in consequence thereof

[1988, c. 56, assented to 13th September, 1988]

SHORT TITLE

(Short title)

1. This Act may be cited as the Canadian International Trade Tribunal Act.

INTERPRETATION

(Definitions)

2. (1) In this Act,

("Chairman" Version anglaise seulement)

"Chairman" means the Chairman of the Tribunal;

("member" "membre")

"member" means a permanent member, temporary member or substitute member of the Tribunal;

("Minister" "ministre")

"Minister" means the Minister of Finance;

("prescribed" Version anglaise seulement)

"prescribed" means prescribed by regulations;

("serious injury" "dommage grave")

"serious injury", in relation to domestic producers of like or directly competitive goods, means a significant overall impairment in the position of the domestic producers;

("textile and apparel goods" "produits textiles et vêtements")

"textile and apparel goods" means the textile and apparel goods set out in Appendix 1.1 of Annex 300-B of Chapter Three of the Agreement;

("threat of serious injury" "menace de dommage grave")

"threat of serious injury" means serious injury that, on the basis of facts, and not merely of allegation, conjecture or remote possibility, is clearly imminent;

("Tribunal" "Tribunal")

"Tribunal" means the Canadian International Trade Tribunal established by subsection 3(1);

("World Trade Organization Agreement" "Accord sur l'Organisation mondiale du commerce")

"World Trade Organization Agreement" has the meaning given to the word "Agreement" in subsection 2(1) of the World Trade Organization Agreement Implementation Act.

(Same meaning)

(2) In this Act, the words "Agreement" and "NAFTA country" have the same meaning as in subsection 2(1) of the North American Free Trade Agreement Implementation Act.

(Goods imported from a NAFTA country)

(3) For the purposes of this Act, goods are imported from a NAFTA country if they are shipped directly to Canada from the NAFTA country within the meaning of sections 17 and 18 of the Customs Tariff.

R.S., 1985, c. 47 (4th Supp.), s. 2; 1993, c. 44, s. 32; 1994, c. 47, s. 27.

APPLICATION

(Suspension of certain provisions)

2.1 The operation of the provisions referred to in column II of this section is suspended during the period in which the provisions referred to in column I opposite those provisions are in force:

Column I	Column II
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Provisions in force	Provisions suspended
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section 19.01	section 19.1
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section 20.01	section 20.1
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section 20.2	section 21
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section 21.1	section 22
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subsections 23(1.01) to (1.03)	subsection 23(1.1)
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subparagraphs 26(1)(a)(i.1) to (i.3)	subparagraph 26(1)(a)(ii)
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paragraphs 27(1)(a.1) to (a.3)	paragraph 27(1)(b)
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1993, c. 44, s. 33.

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Establishment of Tribunal

(Tribunal established)

3. (1) There is hereby established a tribunal, to be known as the Canadian International Trade Tribunal, consisting, subject to subsection (2), of a Chairman, two Vice-Chairmen and not more than six other permanent members to be appointed by the Governor in Council.

(Temporary members)

(2) In addition to the members who may be appointed under subsection (1), the Governor in Council may, whenever in the opinion of the Governor in Council the workload of the Tribunal so requires, appoint temporary members of the Tribunal on such terms and conditions as the Governor in Council may specify, but the number of temporary members holding office shall not at any time exceed five.

(Term)

(3) Each permanent member shall be appointed to hold office for a term not exceeding five years and each temporary member shall be appointed to hold office for a term not exceeding three years.

(Tenure)

(4) Each permanent member and temporary member holds office during good behaviour and may be removed by the Governor in Council at any time for cause.

(Re-appointment of permanent members)

(5) A permanent member, on the expiration of a first term of office, is eligible to be re-appointed for one further term in the same or another capacity.

(Re-appointment of temporary members)

(6) A temporary member is eligible to be re-appointed on the expiration of a first or subsequent term of office.

(Full-time occupation)

4. Each permanent member shall devote the whole of the member's time to the performance of the member's duties under this Act.

(Holding other office, etc., prohibited)

5. A member shall not, during the term of office of the member, accept or hold any office or employment inconsistent with the member's duties under this Act.

(Remuneration)

6. (1) Each member shall be paid such remuneration as is fixed by the Governor in Council.

(Expenses)

(2) Each permanent member is entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of work in the course of performing duties under this Act.

(Idem)

(3) Each temporary member and substitute member is entitled to be paid reasonable travel and living expenses incurred by the member in the course of performing duties under this Act.

(Duties of Chairman)

7. The Chairman is the chief executive officer of the Tribunal and has supervision over and direction of the work of the Tribunal including, without restricting the generality of the foregoing,

(a) the allocation of work among the members and the assignment of members to sit at hearings of the Tribunal and to preside thereat; and

(b) generally, the conduct of the work of the Tribunal, the management of its internal affairs and the duties of the staff of the Tribunal.

(Absence, etc., of Chairman)

8. (1) In the event of the absence or incapacity of the Chairman or if the office of Chairman is vacant, the Tribunal may authorize one of the Vice-Chairmen to act as Chairman for the time being, and a Vice-Chairman so authorized has and may exercise and perform all the powers, duties and functions of the Chairman.

(Absence, etc., of other members)

(2) In the event of the absence or incapacity of a temporary member or a permanent member other than the Chairman, the Governor in Council may appoint a person, on such terms and conditions as the Governor in Council may specify, to act as a substitute member for the time being.

(Acting after termination of appointment)

9. (1) Subject to subsection (2), a person who has ceased to be a member may, with the authorization of the Chairman, take part in the disposition of

any matter in which that person became engaged while holding office as a member, and a person so authorized shall, for that purpose, be deemed to be a member of the Tribunal.

(Limitation period)

(2) No person who has ceased to be a member may, after the expiration of one hundred and twenty days after ceasing to be a member, take part in the disposition of any matter pursuant to the authority granted by the Chairman under subsection (1).

(Where member is unable to act)

(3) Where a person to whom subsection (1) applies or any member has taken part in any matter and has died or for any reason is unable or unwilling to take part in the disposition of the matter, the remaining members, if any, who took part in the matter may, with the authorization of the Chairman, make the disposition notwithstanding that the quorum of members required to dispose of the matter was lost as a result, and the remaining members where so authorized shall, for that purpose, be deemed to constitute a quorum.

(Application of Public Service Superannuation Act to permanent members)

10. (1) A permanent member shall be deemed to be a person employed in the Public Service for the purposes of the Public Service Superannuation Act.

(Application of Public Service Superannuation Act to temporary members)

(2) A temporary member or substitute member shall be deemed not to be employed in the Public Service for the purposes of the Public Service Superannuation Act unless the Governor in Council, by order, deems the member to be so employed for those purposes.

(Order deemed not to be regulation)

(3) For greater certainty, an order made pursuant to subsection (2) shall be deemed not to be a regulation within the meaning and for the purposes of the Statutory Instruments Act.

Head Office, Sittings and Quorum

(Head office)

11. The head office of the Tribunal shall be in the National Capital Region as described in the schedule to the National Capital Act.

(Sittings)

12. The Tribunal may sit at such times and places as it considers necessary or desirable for the proper conduct of its business.

(Quorum, etc.)

13. Subject to subsections 30.11(3), 38(2) and 39(2) and the regulations, three members constitute a quorum of the Tribunal and any three or more members have and may exercise all of the Tribunal's powers and have and may perform all of the Tribunal's duties and functions.

R.S., 1985, c. 47 (4th Supp.), s. 13; 1993, c. 44, s. 34; 1994, c. 47, s. 28.

Staff

(Appointment of Secretary)

14. (1) There shall be a Secretary of the Tribunal, who shall be appointed in accordance with the Public Service Employment Act.

(Acting Secretary)

(2) In the event of the absence or incapacity of the Secretary or if the office of Secretary is vacant, the Chairman may authorize any officer or employee of the Tribunal to act as Secretary for the time being.

(Other staff)

15. (1) Such other officers and employees as are necessary for the proper conduct of the work of the Tribunal shall be appointed in accordance with the Public Service Employment Act.

(Technical experts)

(2) The Tribunal may appoint and, subject to the approval of the Treasury Board, fix the remuneration of persons having technical or special knowledge to assist the Tribunal in any matter in an advisory capacity.

(Secondment)

(3) Subject to any directive of the Treasury Board in relation thereto, any department or agency of the Government of Canada may, on the request of the Tribunal, second to the Tribunal, for specified periods, such officers or employees of the department or agency as are necessary for the proper conduct of the work of the Tribunal.

Powers, Duties and Functions

(Duties and functions)

16. The duties and functions of the Tribunal are to

(a) conduct inquiries and report on matters referred to the Tribunal for inquiry by the Governor in Council or the Minister under this Act;

(a.1) conduct mid-term reviews under section 19.02 and report on the reviews;

(b) consider complaints and extension requests filed with the Tribunal by domestic producers of like or directly competitive goods under this Act and, where appropriate, conduct inquiries into the complaints and extension requests and report on them;

(b.1) receive complaints, conduct inquiries and make determinations under sections 30.1 to 30.19;

(c) hear, determine and deal with all appeals that, pursuant to any other Act of Parliament or regulations thereunder, may be made to the Tribunal, and all matters related thereto; and

(d) exercise and perform such other duties or functions that, pursuant to any other Act of Parliament or regulations thereunder, shall or may be exercised or performed by the Tribunal.

R.S., 1985, c. 47 (4th Supp.), s. 16; 1993, c. 44, s. 35; 1994, c. 47, s. 29.

(Court of record)

17. (1) The Tribunal is a court of record and shall have an official seal, which shall be judicially noticed.

(Powers)

(2) The Tribunal has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its

jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

INQUIRIES AND REVIEWS

References and Mid-Term Reviews

(Inquiry into economic, trade or commercial matters)

18. The Tribunal shall inquire into and report to the Governor in Council on any matter in relation to the economic, trade or commercial interests of Canada with respect to any goods or services or any class thereof that the Governor in Council refers to the Tribunal for inquiry.

(Inquiry into tariff-related matters)

19. The Tribunal shall inquire into and report to the Minister on any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith, that the Minister refers to the Tribunal for inquiry.

(Definition of "principal cause")

19.01 (1) In this section and sections 20 and 20.01, "principal cause" means, in respect of a serious injury or threat thereof, an important cause that is no less important than any other cause of the serious injury or threat.

(Inquiry into U.S. tariff matters)

(2) The Tribunal shall inquire into and report to the Governor in Council on the question whether goods that are entitled to the benefit of the United States Tariff of Schedule I or II to the Customs Tariff, other than textile and apparel goods, are, as a result of the reduction of that tariff, being imported

in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods, where the Governor in Council, on the recommendation of the Minister, refers the question to it for inquiry and report.

(Inquiry into Mexico and Mexico-United States tariff matters)

(3) The Tribunal shall inquire into and report to the Governor in Council on the question whether goods that are entitled to the benefit of the Mexico Tariff, or the Mexico-United States Tariff, of Schedule I to the Customs Tariff, other than textile and apparel goods, are, as a result of the reduction of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods, where the Governor in Council, on the recommendation of the Minister, refers the question to it for inquiry and report.

1993, c. 44, s. 36; 1994, c. 47, ss. 31, 46(F).

(Mid-term review)

19.02 (1) Where an order made under subsection 59.1(1), (8) or (11) of the Customs Tariff or subsection 5(3), (3.2) or (4.01) of the Export and Import Permits Act specifies that it remains in effect for a period of more than three years, the Tribunal shall, before the mid-point of the period,

(a) review developments since the order was made respecting the goods that are subject to the order and like or directly competitive goods produced by domestic producers;

(b) in light of the review, prepare a report on the developments and provide advice on whether the order should remain in effect, be revoked or be amended; and

(c)submit a copy of the report to the Governor in Council and the Minister.

(Notice of report)

(2) Where the Tribunal has prepared a report on a review pursuant to subsection (1), it shall cause notice of the report

(a)to be given to each other interested party; and

(b)to be published in the Canada Gazette.

1994, c. 47, s. 32.

(Definition of "principal cause")

19.1 (1) For the purposes of this section and section 20.1, "principal cause" means, in respect of a serious injury, an important cause that is no less important than any other cause of the serious injury.

(Inquiry into U.S. tariff matters)

(2) The Tribunal shall inquire into and report to the Governor in Council on the question whether goods that are entitled to the benefit of the United States Tariff of Schedule I to the Customs Tariff are, as a result of the reduction or elimination of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods, where the Governor in Council, on the recommendation of the Minister of Finance, refers the question to it for inquiry and report.

1988, c. 65, s. 52.

(Inquiry into injury matters)

20. The Tribunal shall inquire into and report to the Governor in Council on any matter in relation to

(a) the importation of goods into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods, or

(b) the provision, by persons normally resident outside Canada, of services in Canada that may cause or threaten injury to, or that may retard, the provision of any services in Canada by persons normally resident in Canada

that the Governor in Council refers to the Tribunal for inquiry.

R.S., 1985, c. 47 (4th Supp.), s. 20; 1994, c. 47, ss. 33, 46(F).

(Definition of "contribute importantly")

20.01 (1) In this section, "contribute importantly" has the meaning given those words by Article 805 of the Agreement.

(Determination in respect of NAFTA country goods)

(2) Where, in an inquiry conducted pursuant to a reference under section 20 into goods imported from a NAFTA country that are specified by the Governor in Council or in an inquiry conducted pursuant to a complaint under subsection 23(1) into goods so imported that are specified by the Tribunal, the Tribunal finds that the specified imported goods and goods of the same kind imported from other countries are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods, the Tribunal shall determine

(a) whether the quantity of the specified imported goods accounts for a substantial share of total imports of goods of the same kind; and

(b) whether the specified imported goods, alone or, in exceptional circumstances, together with the goods of the same kind imported from each other NAFTA country, contribute importantly to the serious injury or threat thereof.

(Idem)

(2.1) In an inquiry under section 30.07 into goods imported from a NAFTA country conducted pursuant to an extension request, the Tribunal shall determine in respect of each NAFTA country

(a) whether the quantity of the goods imported from the NAFTA country accounts for a substantial share of total imports of goods of the same kind; and

(b) whether the goods imported from the NAFTA country alone or, in exceptional circumstances, together with the goods of the same kind imported from each other NAFTA country, contribute importantly to serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

(Considerations)

(3) In making a determination under this section, the Tribunal shall take fully into account paragraph 2 of Article 802 of the Agreement.

1993, c. 44, s. 37; 1994, c. 47, ss. 34, 46(F).

(Interpretation)

20.1 (1) For the purposes of this section,

("Agreement" "Accord")

"Agreement" has the same meaning as in the Canada-United States Free Trade Agreement Implementation Act;

("contribute importantly" "contribuer de manière importante")

"contribute importantly" has the meaning given that expression by Article 1104 of the Agreement;

("goods originating in the United States" "marchandises originaires des Etats-Unis")

"goods originating in the United States" means imported goods that qualify under the regulations respecting the origin of goods made under the Customs Tariff, as those regulations apply to the United States, that are specified

(a) by the Governor in Council, in the case of a reference by the Governor in Council, or

(b) by the Tribunal, in the case of a written complaint filed under subsection 23(1).

(Interpretation)

(2) In interpreting the term "substantial" for the purposes of this section, regard shall be had to paragraph I of Article 1102 of the Agreement.

(Determination in respect of U.S. goods)

(3) Where, in an inquiry conducted pursuant to section 20 or 26, the Tribunal finds that goods originating in the United States and goods of the same kind originating in other countries are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods, the Tribunal shall determine whether the quantity of

such goods originating in the United States is substantial in comparison with the quantity of goods of the same kind originating in other countries and whether the goods originating in the United States contribute importantly to the serious injury or threat thereof.

1988, c. 65. s. 53.

(Terms of reference)

20.2 (1) The Tribunal shall conduct an inquiry under section 18, 19, 19.01 or 20 and shall prepare its report thereon in accordance with the terms of reference therefor established by the Governor in Council or the Minister, as the case may be.

(Determinations)

(2) In the case of an inquiry to which section 20.01 applies, the Tribunal shall include in its report any determination made pursuant to that section.

(Tabling of report)

(3) The Minister shall cause a copy of each report submitted to the Governor in Council or the Minister pursuant to section 18, 19, 19.01 or 20 to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is so submitted.

(Notice of report)

(4) The Tribunal shall cause notice of the submission of a report pursuant to section 18, 19, 19.01 or 20 to be published in the Canada Gazette.

1993, c. 44, s. 38; 1994, c. 47, s. 35.

(Terms of reference)

21. (1) The Tribunal shall conduct an inquiry under section 18, 19, 19.1 or 20 and shall prepare its report thereon in accordance with the terms of reference therefor established by the Governor in Council or the Minister, as the case may be.

(Determinations)

(1.1) In the case of an inquiry to which subsection 20.1(3) applies, the Tribunal shall include in its report any determination made pursuant to that subsection.

(Tabling of report)

(2) The Minister shall cause a copy of each report submitted to the Governor in Council or the Minister pursuant to section 18, 19, 19.1 or 20 to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is so submitted.

(Notice of report)

(3) The Tribunal shall cause notice of the submission of a report pursuant to section 18, 19, 19.1 or 20 to be published in the Canada Gazette.

R.S., 1995, c. 47 (4th Supp.), s. 21; 1988, c. 65, s. 54.

Complaints by Domestic Producers

(Definition of "complaint")

21.1 In sections 23 to 30, "complaint" means a written complaint filed with the Tribunal under subsection 23(1), (1.01), (1.02) or (1.03), and, for the purposes of those sections, a complaint is properly documented if the Tribunal is satisfied that it contains or is accompanied by the information required by section 23.

1993, c. 44, s. 39.

(Definition of "complaint")

22. In sections 23 to 30, "complaint" means a written complaint filed with the Tribunal under subsection 23(1) or (1.1), and, for the purposes of those sections, a complaint is properly documented if the Tribunal is satisfied that it contains or is accompanied by the information required by section 23.

R.S., 1985, c. 47 (4th Supp.), s. 22; 1988, c. 65, s. 55.

(Filing of complaint)

23. (1) Any domestic producer of goods that are like or directly competitive with goods being imported into Canada, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that the imported goods are being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods.

(Idem)

(1.01) Any domestic producer of goods that are like or directly competitive with any goods, other than textile and apparel goods, being imported into Canada and that are entitled to the benefit of the United States Tariff of Schedule I or II to the Customs Tariff, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that, as a result of the reduction of that tariff, the imported goods are being imported in such increased quantities and under such conditions as to alone constitute a cause of serious injury to domestic producers of like or directly competitive goods.

(Idem)

(1.02) Any domestic producer of goods that are like or directly competitive with any goods, other than textile and apparel goods, being imported into Canada and that are entitled to the benefit of the Mexico Tariff, or the Mexico-United States Tariff, of Schedule I to the Customs Tariff, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that, as a result of the reduction of that tariff, the imported goods are being imported in such increased quantities and under such conditions as to alone constitute a cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

(Idem)

(1.03) Any domestic producer of any textile and apparel goods that are like or directly competitive with any textile and apparel goods being imported into Canada and that are entitled, either under subsection 25.2(5.1) of the Customs Tariff or, in respect of goods that have been integrated into the General Agreement on Tariffs and Trade pursuant to a commitment made by Canada under any successor agreement to the Multifibre Arrangement, under subsection 25.2(7) of the Customs Tariff, to the benefit of the United States Tariff, or the Mexico Tariff, of Schedule I to that Act, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that, as a result of the reduction of that tariff, the imported goods are being imported in such increased quantities, in absolute terms or relative to the domestic market in Canada for the goods, and under such conditions as to cause serious damage, or actual threat thereof, to domestic producers of like or directly competitive textile and apparel goods.

(Idem)

(1.1) Any domestic producer of goods that are like or directly competitive with any goods being imported into Canada and that are entitled to the benefit of the United States Tariff of Schedule I to the Customs Tariff, or any person or association acting on behalf of any such domestic producer,

may file a written complaint with the Tribunal alleging that as a result of the reduction or elimination of that tariff, the imported goods are being imported in such increased quantities and under such conditions as to alone constitute a cause of serious injury to domestic producers of like or directly competitive goods.

(Contents of complaint)

(2) A complaint shall

(a) state in reasonable detail the facts on which the allegations are based;

(b) state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by the domestic producers by whom or on whose behalf the complaint is filed; and

(c) make such other representations as the complainant deems relevant to the matter.

(Accompanying information)

(3) A complaint shall be accompanied by

(a) such information as is available to the complainant to prove the facts referred to in paragraph (2)(a) and to substantiate the estimate referred to in paragraph (2)(b); and

(b) such other information as may be required by the rules.

(Receipt to be acknowledged)

(4) The Tribunal shall, forthwith after the receipt of a complaint, notify the complainant in writing of the receipt and date of receipt thereof.

R.S., 1985, c. 47 (4th Supp.), s. 23; 1988, c. 65, s. 56; 1993, c. 44, s. 40; 1994, c. 47, ss. 46(F), 47(F).

(Requests for additional information)

24. (1) The Tribunal may, within twenty-one days after the date of receipt of a complaint, by notice in writing, request the complainant to provide such additional information as the Tribunal considers necessary in order for the complaint to be properly documented.

(Further requests)

(2) Where the Tribunal receives additional information in relation to a complaint pursuant to a request made under subsection (1) or this subsection, the Tribunal may, within twenty-one days after the date of receipt of the additional information, by notice in writing, request the complainant to provide such additional information as the Tribunal considers necessary in order for the complaint to be properly documented.

(Tribunal shall determine if complaint is properly documented)

25. (1) The Tribunal shall, within twenty-one days after the date of receipt of a complaint or, where the Tribunal has requested the complainant to provide additional information pursuant to subsection 24(1) or (2), within twenty-one days after the receipt of the additional information requested, determine whether the complaint is properly documented.

(Notice of decision)

(2) Where the Tribunal determines under subsection (1) that a complaint is properly documented, it shall forthwith

(a) notify the complainant in writing that the complaint is properly documented;

(b) notify each other interested party in writing of the receipt of the complaint and that the complaint is properly documented; and

(c) in the case of a complaint filed under subsection 23(1.03), send to the Minister a copy of the complaint and the information examined by the Tribunal in making its determination.

(Idem)

(3) Where the Tribunal determines under subsection (1) that a complaint is not properly documented, it shall forthwith notify the complainant in writing that the complaint is not properly documented and of its reasons for so concluding.

R.S., 1985, c. 47 (4th Supp.), s. 25; 1993, c. 44, s. 41.

(Tribunal shall commence inquiry)

26. (1) Subject to subsections (4) to (7), the Tribunal shall, within thirty days after the day on which notice is given to a complainant that the complaint is properly documented, commence an inquiry into the complaint if it is satisfied

(a) that the information provided by the complainant and any other information examined by the Tribunal disclose a reasonable indication that

(i) in the case of a complaint filed under subsection 23(1), the goods that are the subject of the complaint are being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods,

(i.1) in the case of a complaint filed under subsection 23(1.01), the goods that are entitled to the benefit of the United States Tariff of Schedule I or II to the Customs Tariff are, as a result of the reduction of that tariff, being

imported in such increased quantities and under such conditions that they alone constitute a cause of serious injury to domestic producers of like or directly competitive goods,

(i.2) in the case of a complaint filed under subsection 23(1.02), the goods that are entitled to the benefit of the Mexico Tariff, or the Mexico-United States Tariff, of Schedule I to the Customs Tariff are, as a result of the reduction of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods,

(i.3) in the case of a complaint filed under subsection 23(1.03), the textile and apparel goods that are entitled to the benefit of the United States Tariff, or the Mexico Tariff, of Schedule I to the Customs Tariff are, as a result of the reduction of that tariff, being imported in such increased quantities, in absolute terms or relative to the market in Canada for the goods, and under such conditions as to cause serious damage, or actual threat thereof, to domestic producers of like or directly competitive textile and apparel goods,
or

(ii) in the case of a complaint filed under subsection 23(1.1), the goods that are entitled to the benefit of the United States Tariff of Schedule I to the Customs Tariff are, as a result of the reduction or elimination of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a cause of serious injury to domestic producers of like or directly competitive goods;

(b) that the complaint is made by or on behalf of domestic producers who produce a major proportion of domestic production of the like or directly competitive goods; and

(c) where an inquiry in relation to the like or directly competitive goods has been completed or terminated by the Tribunal under this Act during the twenty-four month period preceding the date of receipt of the complaint, that the circumstances are sufficiently different to warrant a new inquiry.

(Notice of decision)

(2) Where the Tribunal decides to commence an inquiry into a complaint under subsection (1), it shall forthwith

(a) notify the complainant and each other interested party in writing of its decision, of the reasons therefor, and of the date on which any hearing in the inquiry shall commence;

(b) cause a notice of its decision and the date on which any hearing in the inquiry shall commence to be published in the Canada Gazette; and

(c) send a copy of its decision, a copy of the complaint and the information accompanying the complaint and a copy of any other relevant information examined by the Tribunal in relation to the complaint to the Minister.

(Copies to Minister)

(2.1) Notwithstanding subsection (2), in the case of a complaint filed under subsection 23(1.03), the Tribunal shall send to the Minister only a copy of its decision and a copy of any relevant information examined by the Tribunal in relation to the complaint that was not previously sent to the Minister pursuant to subsection 25(2).

(Idem)

(3) Where the Tribunal decides not to commence an inquiry into a complaint under subsection (1), it shall forthwith

(a) notify the complainant and each other interested party in writing of its decision and of the reasons for its refusal to commence an inquiry and, where the reasons for its decision are based in whole or in part on information that was obtained from a source other than the complainant, of

the fact that the decision was based in whole or in part on such information;
and

(b) cause a notice of its decision to be published in the Canada Gazette.

(Evidence of dumping or subsidizing)

(4) Where, before commencing an inquiry into a complaint under subsection (1), the Tribunal forms the opinion that the injury or threat of injury alleged in the complaint appears to be caused by the dumping or subsidizing of goods within the meaning of the Special Import Measures Act, the Tribunal shall forthwith

(a) by notice in writing, refer the complaint to the Deputy Minister of National Revenue for consideration under the Special Import Measures Act, and

(b) notify the complainant and each other interested party in writing that the complaint has been so referred to the Deputy Minister.

(Inquiry only in case of dumping)

(5) The Tribunal may commence an inquiry under subsection (1) into a complaint that pursuant to subsection (4) is referred to the Deputy Minister of National Revenue for consideration under the Special Import Measures Act only if

(a) the Deputy Minister does not initiate an investigation under that Act respecting the dumping or subsidizing of the goods that are the subject of the complaint or initiates such an investigation but terminates the investigation pursuant to section 35, 36 or 41 of that Act; and

(b) the complainant applies to the Tribunal to commence an inquiry under subsection (1)

(i) in the case where the Deputy Minister does not initiate such an investigation, within thirty days after the date of the notice sent to the complainant pursuant to subsection 33(1) of that Act advising the complainant of the Deputy Minister's decision or, where the Deputy Minister or complainant refers to the Tribunal the question mentioned in subsection 33(2) of that Act, within thirty days after the date the Tribunal renders its advice on the question, or

(ii) in the case where the Deputy Minister initiates such an investigation but terminates the investigation pursuant to section 35, 36 or 41 of that Act, within thirty days after the date of the notice sent to the complainant pursuant to section 35, 36 or 41 of that Act advising the complainant of the termination of the investigation.

(Extension of time)

(6) The Tribunal shall, within thirty days after the date of receipt of an application made under subsection (5), decide whether to commence an inquiry into the complaint under subsection (1) and it may commence an inquiry notwithstanding that the thirty day period referred to in that subsection has expired.

(Time-limit on inquiry)

(7) Where subsection 59.1(3.1) of the Customs Tariff or subsection 5(3.1) of the Export and Import Permits Act prohibits the making of an order pursuant to subsection 59.1(1) of the Customs Tariff or subsection 5(3) of the Export and Import Permits Act in respect of any goods during any period, the Tribunal may commence an inquiry into a complaint under subsection (1) in respect of the goods no earlier than one hundred and eighty days before the end of the period.

R.S., 1985, c. 47 (4th Supp.), s. 26; 1998, c. 65, s. 57; 1993, c. 44, s. 42; 1994, c. 13, s. 7, c. 47, ss. 36, 46(F), 47(F).

(Principal cause of injury)

27. (1) The Tribunal shall, in an inquiry into a complaint, determine whether, having regard to any regulations made pursuant to paragraph 40(a),

(a) in the case of a complaint filed under subsection 23(1), the goods that are the subject of the complaint are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods;

(a.1) in the case of a complaint filed under subsection 23(1.01), the goods that are entitled to the benefit of the United States Tariff of Schedule I or II to the Customs Tariff are, as a result of the reduction of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods;

(a.2) in the case of a complaint filed under subsection 23(1.02), the goods that are entitled to the benefit of the Mexico Tariff, or the Mexico-United States Tariff, of Schedule I to the Customs Tariff are, as a result of the reduction of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods;

(a.3) in the case of a complaint filed under subsection 23(1.03), the textile and apparel goods that are entitled to the benefit of the United States Tariff, or the Mexico Tariff, of Schedule I to the Customs Tariff are, as a result of the reduction of that tariff, being imported in such increased quantities, in absolute terms or relative to the market in Canada for the goods, and under such conditions as to cause serious damage, or actual threat thereof, to domestic producers of like or directly competitive textile and apparel goods;
or

(b) in the case of a complaint filed under subsection 23(1.1), the goods that are entitled to the benefit of the United States Tariff of Schedule I to the Customs Tariff are, as a result of the reduction or elimination of that tariff, being imported in such increased quantities and under such conditions that they alone constitute a principal cause of serious injury to domestic producers of like or directly competitive goods.

(Definition of "principal cause")

(2) For the purposes of subsection (1), "principal cause" means, in respect of a serious injury or threat thereof, an important cause that is no less important than any other cause of the serious injury or threat thereof.

(Considerations)

(2.1) In making a determination under paragraph (1)(a.3), regard shall be had to paragraph 2 of section 4 of Annex 300-B of Chapter Three of the Agreement.

(Other matters)

(3) The Tribunal shall, in an inquiry into a complaint, examine any other matter in relation to the complaint that the Governor in Council refers to it for examination.

R.S., 1985, c. 47 (4th Supp.), s. 27; 1988, c. 65, s. 58; 1993, c. 44, s. 43; 1994, c. 47, ss. 46(F), 47(F).

(Reference to Deputy Minister)

28. (1) Where, at any time during an inquiry into a complaint, the Tribunal forms the opinion that the injury or threat of injury alleged in the complaint appears to be caused by the dumping or subsidizing of goods within the meaning of the Special Import Measures Act, the Tribunal shall forthwith

adjourn the inquiry, give notice thereof to the complainant and each other interested party and, by notice in writing, refer the complaint to the Deputy Minister of National Revenue for consideration under the Special Import Measures Act.

(Resumption of inquiry)

(2) Where, pursuant to subsection (1), the Tribunal adjourns an inquiry into a complaint and refers the complaint to the Deputy Minister of National Revenue for consideration under the Special Import Measures Act, the Tribunal shall resume the inquiry only if

(a) the Deputy Minister does not initiate an investigation under that Act respecting the dumping or subsidizing of the goods that are the subject of the complaint or initiates such an investigation but terminates the investigation pursuant to section 35, 36 or 41 of that Act; and

(b) the complainant applies to the Tribunal to resume the inquiry

(i) in the case where the Deputy Minister does not initiate such an investigation, within thirty days after the date of the notice sent to the complainant pursuant to subsection 33(1) of that Act advising the complainant of the Deputy Minister's decision or, where the Deputy Minister or complainant refers to the Tribunal the question mentioned in subsection 33(2) of that Act, within thirty days after the date the Tribunal renders its advice on the question, or

(ii) in the case where the Deputy Minister initiates such an investigation but terminates the investigation pursuant to section 35, 36 or 41 of that Act, within thirty days after the date of the notice sent to the complainant pursuant to section 35, 36 or 41 of that Act advising the complainant of the termination of the investigation.

(Termination of inquiry)

(3) Where the Tribunal decides not to resume an inquiry pursuant to subsection (2) by reason that the conditions referred to in that subsection have not been met, the Tribunal shall terminate the inquiry and cause written notice of such termination to be given forthwith to the complainant and each other interested party.

R.S., 1985, c. 47 (4th Supp.), s. 28., 1994, c. 13, s. 7, c. 47, s. 46(F).

(Report on inquiry)

29. (1) The Tribunal shall prepare a report on each inquiry commenced by it under subsection 26(1) not later than one hundred and eighty days after the inquiry is commenced.

(Extension of time)

(2) Where, in the opinion of the Tribunal, the period referred to in subsection (1) should be extended for any reason including, without limiting the generality of the foregoing,

(a) the complexity or novelty of the issues presented by the inquiry,

(b) the variety of goods or number of persons involved in the inquiry,

(c) the difficulty of obtaining satisfactory evidence in the inquiry, or

(d) the reference, pursuant to subsection 27(3), of any other matter for examination in the inquiry,

the Tribunal may extend that period by not more than ninety days and, where it does so extend the period, it shall so notify the complainant and each other interested party forthwith in writing.

(Copies of report)

(3) The Tribunal shall submit a copy of each report prepared by it pursuant to subsection (1) to the Governor in Council, the Minister, the complainant and any other person who made representations to the Tribunal during the inquiry.

(Notice of report)

(4) Where the Tribunal has prepared a report on an inquiry pursuant to subsection (1), it shall cause notice thereof

(a) to be given to each other interested party; and

(b) to be published in the Canada Gazette.

(Tabling of report in certain cases)

(5) Where, pursuant to subsection 27(3), the Governor in Council refers a matter to the Tribunal for examination in an inquiry into a complaint, the Minister shall cause a copy of the report on the inquiry to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is submitted to the Governor in Council.

(Further inquiry)

30. (1) The Governor in Council may, at any time after the receipt of a report on an inquiry into a complaint prepared by the Tribunal pursuant to subsection 29(1), request the Tribunal to inquire into and report to the Governor in Council on any matter in relation to that report.

(Terms of reference)

(2) The Tribunal shall conduct an inquiry under subsection (1) and shall prepare its report thereon in accordance with the terms of reference therefor established by the Governor in Council.

(Copies of report)

(3) The Tribunal shall send a copy of each report submitted to the Governor in Council pursuant to subsection (1) to the Minister, the complainant and any other person to whom a copy of the report on the original inquiry was submitted pursuant to subsection 29(3).

(Notice of report)

(4) The Tribunal shall cause notice of the submission of a report to the Governor in Council pursuant to subsection (1)

(a) to be given to each other interested party; and

(b) to be published in the Canada Gazette.

(Tabling of report)

(5) The Minister shall cause a copy of each report submitted to the Governor in Council pursuant to subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is so submitted.

(Definition of "surge")

30.01 (1) In this section, "surge" has the meaning given that word by Article 805 of the Agreement.

(Filing of surge complaint)

(2) A written complaint may be filed with the Tribunal where

(a) any goods are subject to a surtax under subsection 59.1(1) or (8) of the Customs Tariff or are included on the Import Control List pursuant to subsection 5(3) or (3.2) of the Export and Import Permits Act; and

(b) the surtax or inclusion does not apply to or include goods imported from a NAFTA country on the basis of a determination made under subsection 20.01(2) or (2.1) of this Act.

(Allegations)

(2.1) The complaint must allege that a surge of imports of goods imported from a NAFTA country undermines the effectiveness of the surtax or the inclusion of the goods on the Import Control List.

(Who must file complaint)

(2.2) The complaint must be filed by a domestic producer of like or directly competitive goods, or a person or association acting on behalf of any such domestic producer.

(Contents of complaint)

(3) A complaint shall state in reasonable detail the facts on which the allegations are based and shall be accompanied by such information as is available to the complainant to prove those facts and such other information as may be required by the rules.

(Commencement of inquiry)

(4) The Tribunal shall, within thirty days after the date of receipt of a complaint, commence an inquiry into the complaint if it is satisfied that the information provided by the complainant and any other information examined by the Tribunal disclose a reasonable indication that a surge of imports of goods referred to in subsection (2) is undermining the effectiveness of the surtax or inclusion referred to in that subsection.

(Notice of decision)

(5) Where the Tribunal decides not to commence an inquiry into a complaint under subsection (4), it shall forthwith notify the complainant and each other interested party in writing of its decision and of the reasons for the refusal to commence an inquiry and, where the reasons for its decision are based in whole or in part on information that was obtained from a source other than the complainant, of the fact that the decision was based in whole or in part on that information.

(Surge of imports)

(6) The Tribunal shall, in the inquiry, determine whether a surge of imports of goods referred to in subsection (2) is undermining the effectiveness of the surtax or inclusion referred to in that subsection.

(Report)

(7) The Tribunal shall prepare a report on the inquiry not later than sixty days after the inquiry is commenced and submit copies of it to the Governor in Council, the Minister, the complainant and any person who made representations to the Tribunal during the inquiry.

(Notice of report)

(8) The Tribunal shall cause notice of the report to be given to other interested parties and to be published in the Canada Gazette.

1993, c. 44, s. 44; 1994, c. 47, s. 37.

EXTENSION INQUIRIES

(Definition of "extension request")

30.02 In sections 30.03 to 30.09, "extension request" means a written request filed with the Tribunal under section 30.04.

1994, c. 47, s. 38.

(Notice of expiring orders)

30.03 (1) The Tribunal shall cause to be published in the Canada Gazette a notice of the expiration date of any order that imposes a surtax on any goods pursuant to subsection 59.1(1), (8) or (11) of the Customs Tariff or includes any goods on the Import Control List pursuant to subsection 5(3), (3.2) or (4.01) of the Export and Import Permits Act, but no notice shall be published if

(a) the order is revoked or ceases to have effect pursuant to subsection 59.1(4), (5), (6), (8.4) or (9) of the Customs Tariff or subsection 5(4.04) of the Export and Import Permits Act before the expiration of the effective period specified in the order; or

(b) the total of the effective period specified in the order and any periods during which the goods were subject to any related orders made pursuant to subsection 59.1(1), (8) or (11) of the Customs Tariff or subsection 5(3), (3.2) or (4.01) of the Export and Import Permits Act is eight years.

(Manner and contents of publication)

(2) The notice shall be published in accordance with the rules and shall state the final date for filing an extension request in respect of the order.

1994, c. 47, s. 38.

(Filing of request relating to extension orders)

30.04 (1) Any domestic producer of goods that are like or directly competitive with any goods that are subject to an order referred to in subsection 30.03(1), or any person or association acting on behalf of any such domestic producer, may file with the Tribunal a written request that an extension order be made pursuant to subsection 59.1(8) of the Customs Tariff or subsection 5(3.2) of the Export and Import Permits Act because an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods.

(Time-limit for filing extension request)

(2) An extension request shall be filed no later than the final date for filing specified in the notice published pursuant to subsection 30.03(2).

(Receipt to be acknowledged)

(3) The Tribunal shall, forthwith after receipt of an extension request, notify the requester in writing of its receipt and the date of its receipt.

1994, c. 47, s. 38.

(Contents of extension request)

30.05 (1) An extension request shall

(a) state in reasonable detail the facts on which it is based;

(b) state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by the domestic producers by whom or on whose behalf the extension request is filed; and

(c) make such other representations as the requester deems relevant to the matter.

(Accompanying information)

(2) An extension request shall be accompanied by

(a) such information as is available to the requester to prove the facts referred to in paragraph (1)(a) and to substantiate the estimate referred to in paragraph (1)(b); and

(b) such other information as may be required by the rules.

1994, c. 47, s. 38.

(Request for additional information)

30.06 (1) Within twenty-one days after receiving an extension request the Tribunal may, by notice in writing, ask the requester to provide such additional information as the Tribunal considers necessary for the request to be properly documented.

(Tribunal shall determine if complaint is properly documented)

(2) The Tribunal shall determine whether an extension request is properly documented within 21 days after receiving the request or, where the Tribunal has asked the requester to provide additional information pursuant to subsection (1), within twenty-one days after receiving the additional information.

(Notice where request properly documented)

(3) Where the Tribunal determines that an extension request is properly documented, it shall forthwith

(a) notify the requester in writing that the request is properly documented; and

(b) notify each other interested party in writing that it has received the request and that the request is properly documented.

(Notice where request not properly documented)

(4) Where the Tribunal determines that an extension request is not properly documented, it shall forthwith notify the requester in writing that the request is not properly documented and of its reasons for so concluding.

1994, c. 47, s. 38.

(Inquiries into extension requests)

30.07 (1) The Tribunal shall commence an inquiry into an extension request within thirty days after notice is given to the requester that the extension request is properly documented if the Tribunal is satisfied

(a) that the information provided by the requester and any other information examined by the Tribunal discloses a reasonable indication that an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods; and

(b) that the extension request is made by or on behalf of domestic producers who produce a major proportion of domestic production of the like or directly competitive goods.

(Notice of decision)

(2) Where the Tribunal decides to commence an inquiry into an extension request under subsection (1), it shall forthwith

(a) notify the requester and each other interested party in writing of its decision, of the reasons for its decision and of the date on which any hearing in the inquiry shall commence;

(b) cause a notice of its decision and the date on which any hearing in the inquiry shall commence to be published in the Canada Gazette; and

(c) send to the Minister a copy of its decision, a copy of the request and the information accompanying the request and a copy of any other relevant information examined by the Tribunal in relation to the request.

(Idem)

(3) Where the Tribunal decides not to commence an inquiry into an extension request under subsection (1), it shall forthwith

(a) notify the requester and each other interested party in writing of its decision and of the reasons for its refusal to commence an inquiry and, where the reasons for its decision are based in whole or in part on information that was obtained from a source other than the requester, of the fact that the decision was based in whole or in part on such information; and

(b) cause a notice of its decision to be published in the Canada Gazette.

1994, c. 47, s. 38.

(Continuing necessity of order)

30.08 (1) The Tribunal shall, in an inquiry into an extension request, determine whether

(a) an order continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods; and

(b) there is evidence that the domestic producers of like or directly competitive goods are adjusting, as determined in accordance with any regulations made under paragraph 40(b).

(Other matters)

(2) The Tribunal shall, in an inquiry into an extension request, examine any other matter in relation to the extension request that the Governor in Council refers to it for examination.

1994, c. 47, s. 38.

(Report on extension inquiry)

30.09 (1) Not later than 45 days before the expiration date of the order to which an inquiry under subsection 30.07(1) relates, the Tribunal shall prepare a report on the inquiry and submit a copy of it to the Governor in Council, the Minister, the requester and any other person who made representations to the Tribunal during the inquiry.

(Notice of report)

(2) Where the Tribunal has prepared a report on an inquiry pursuant to subsection (1), it shall cause notice of the report

(a) to be given to each other interested party; and

(b) to be published in the Canada Gazette.

(Tabling of report in certain cases)

(3) Where, pursuant to subsection 30.08(2), the Governor in Council refers a matter to the Tribunal for examination in an inquiry into an extension request, the Minister shall cause a copy of the report on the inquiry to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the report is submitted to the Governor in Council.

1994, c. 47. s. 38.

COMPLAINTS BY POTENTIAL SUPPLIERS

(Definitions)

30.1 In this section and in sections 30.11 to 30.19,

("complaint" "plainte")

"complaint" means a complaint filed with the Tribunal under subsection 30.11(1);

("designated contract" "contrat spécifique")

"designated contract" means a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations;

("government institution" "institution fédérale")

"government institution" means any department or Ministry of State of the Government of Canada, or any other body or office, that is designated by the regulations;

("interested party" "intéressée")

"interested party" means a potential supplier or any person who has a material and direct interest in any matter that is the subject of a complaint;

("potential supplier" "fournisseur potentiel")

"potential supplier" means, subject to any regulations made under paragraph 40(f.1), a bidder or prospective bidder on a designated contract.

1993, c. 44, s. 44; 1994, c. 47, s. 39.

(Filing of complaint)

30.11 (1) Subject to the regulations, a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint.

(Contents of complaint)

(2) A complaint must

(a) be in writing;

(b) identify the complainant, the designated contract concerned and the government institution that awarded or proposed to award the contract;

(c) contain a clear and detailed statement of the substantive and factual grounds of the complaint;

(d) state the form of relief requested;

(e) set out the address of the complainant to which notices and other communications respecting the complaint may be sent;

(f) include all information and documents relevant to the complaint that are in the complainant's possession;

(g) be accompanied by any additional information and documents required by the rules, and

(h) be accompanied by the fees required by the regulations.

(Chairman may assign member)

(3) The Chairman may assign one member of the Tribunal to deal with a complaint and a member so assigned has and may exercise all of the Tribunal's powers, and has and may perform all of the Tribunal's duties and functions, in relation to the complaint.

1993, c. 44, s. 44; 1994, c. 47. s. 40(E).

(Notice of receipt)

30.12 (1) The Tribunal notify the complainant in writing of the receipt of the complaint.

(Notice of deficiency)

(2) Where the Tribunal determines that a complaint does not comply with subsection 30.11(2), it shall notify the complainant in writing and specify the deficiencies to be corrected, the corrective action required and the period within which the action must be taken.

(Notice of compliance)

(3) Where the Tribunal determines that a complaint complies with subsection 30.11(2), it shall notify, in writing, the complainant, the relevant government institution and any other party that the Tribunal considers to be an interested party.

1993, c. 44, s. 44.

(Decision to conduct inquiry)

30.13 (1) Subject to the regulations, after the Tribunal determines that a complaint complies with subsection 30.11(2), it shall decide whether to conduct an inquiry into the complaint, which inquiry may include a hearing.

(Notice of inquiry)

(2) Where the Tribunal decides to conduct an inquiry, it shall notify, in writing, the complainant, the relevant government institution and any other party that the Tribunal considers to be an interested party and give them an opportunity to make representations to the Tribunal with respect to the complaint.

(Postponement of award of contract)

(3) Where the Tribunal decides to conduct an inquiry into a complaint that concerns a designated contract proposed to be awarded by a government institution, the Tribunal may order the government institution to postpone the awarding of the contract until the Tribunal determines the validity of the complaint.

(Idem)

(4) The Tribunal shall rescind an order made under subsection (3) if, within the prescribed period after the order is made, the government institution certifies in writing that the procurement of the goods or services to which the designated contract relates is urgent or that a delay in awarding the contract would be contrary to the public interest.

(Decision not to conduct or to cease inquiry)

(5) The Tribunal may decide not to conduct an inquiry into a complaint or decide to cease conducting an inquiry if it is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, and where the Tribunal so decides, it shall notify, in writing, the complainant, the relevant government institution and any other party that the Tribunal considers to be an interested party of that decision and the reasons therefor.

1993, c. 44. s. 44.

(Matters inquired into)

30.14 (1) In conducting an inquiry, the Tribunal shall limit its considerations to the subject-matter of the complaint.

(Matter to be decided)

(2) At the conclusion of an inquiry, the Tribunal shall determine whether the complaint is valid on the basis of whether the procedures and other requirements prescribed in respect of the designated contract, or the class of contracts to which it belongs, have been or are being observed.

1993, c. 44, s. 44.

(Findings and recommendations)

30.15 (1) Where the Tribunal decides to conduct an inquiry, it shall, within the prescribed period after the complaint is filed, provide the complainant, the relevant government institution and any other party that the Tribunal considers to be an interested party with the Tribunal's findings and recommendations, if any.

(Remedies)

(2) Subject to the regulations, where the Tribunal determines that a complaint is valid, it may recommend such remedy as it considers appropriate, including any one or more of the following remedies:

(a) that a new solicitation for the designated contract be issued;

(b) that the bids be re-evaluated;

(c) that the designated contract be terminated;

(d) that the designated contract be awarded to the complainant; or

(e) that the complainant be compensated by an amount specified by the Tribunal.

(Criteria to be applied)

(3) The Tribunal shall, in recommending an appropriate remedy under subsection (2), consider all the circumstances relevant to the procurement of the goods or services to which the designated contract relates, including

(a) the seriousness of any deficiency in the procurement process found by the Tribunal;

(b) the degree to which the complainant and all other interested parties were prejudiced;

(c) the degree to which the integrity and efficiency of the competitive procurement system was prejudiced,

(d) whether the parties acted in good faith; and

(e) the extent to which the contract was performed.

(Cost of preparing response)

(4) Subject to the regulations, the Tribunal may award to the complainant the reasonable costs incurred by the complainant in preparing a response to the solicitation for the designated contract.

1993, c. 44. s. 44.

(Costs)

30.16 (1) Subject to the regulations, the Tribunal may award costs of, and incidental to, any proceedings before it in relation to a complaint on a final or interim basis and the costs may be fixed at a sum certain or may be taxed.

(Payment)

(2) Subject to the regulations, the Tribunal may direct by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed.

1993, c. 44. s. 44.

(Intervenors)

30.17 An interested party may, with leave of the Tribunal, intervene in any proceedings before the Tribunal in relation to a complaint.

1993, c. 44, s. 44.

(Implementation of recommendations)

30.18 (1) Where the Tribunal makes recommendations to a government institution under section 30.15, the government institution shall, subject to the regulations, implement the recommendations to the greatest extent possible.

(Notice of intention)

(2) Within the prescribed period, the government institution shall advise the Tribunal in writing of the extent to which it intends to implement the recommendations and, if it does not intend to implement them fully, the reasons for not doing so.

(Notice of progress)

(3) Where the government institution has advised the Tribunal that it intends to implement the recommendations in whole or in part, it shall further

advise the Tribunal in writing, within the prescribed period, of the extent to which it has then implemented the recommendations.

1993, c. 44, s. 44.

(Comments and observations)

30.19 (1) The Tribunal may provide the deputy head of a government institution with its comments and observations on any matter that the Tribunal considers should be brought to the attention of the deputy head in connection with the procurement process.

(Definition of "deputy head")

(2) In subsection (1), "deputy head" means

(a) where the government institution is a department or Ministry of State, the person having by law the status of deputy head; and

(b) where the government institution is any other body or an office, the chief executive officer of that body or the person holding that office.

1993, c. 44, s. 44.

GENERAL

Procedural Matters

(Right to appear)

31. All parties to a hearing before the Tribunal may appear in person or may be represented at the hearing by counsel or an agent.

(Hearing may be in camera)

32. A hearing before the Tribunal may, on the request of any party to the hearing, be held in camera if that party establishes to the satisfaction of the Tribunal that the circumstances of the case so require.

(Hearing and taking of evidence)

33. (1) The Chairman may direct that evidence relating to any inquiry under this Act or to any matter before the Tribunal pursuant to the Special Import Measures Act, other than an appeal made pursuant to section 61 of that Act, be received, in whole or in part, by a member and, for that purpose, that member has and may exercise all of the powers of the Tribunal.

(Report on evidence)

(2) A member by whom evidence relating to any matter has been received pursuant to subsection (1) shall make a report thereon to the Tribunal and a copy of the report, modified in such manner as in the opinion of the member is necessary to comply with sections 45 and 49, shall be provided to every person who is a party to the proceedings before the Tribunal in the matter.

(Making of order, finding or report)

(3) After receiving a report on evidence relating to a matter and after holding such hearing, re-hearing or further hearing with respect to the matter as the circumstances require or as the Tribunal in its discretion deems it advisable to hold, the Tribunal may make its order, finding or report or take such other action in relation to the matter as is authorized to be taken by it in relation to the matter under this or any other Act of Parliament, as if the evidence received by the member had been received by the Tribunal.

(Information other than sworn evidence)

34. For the purpose of any inquiry under this Act or the Special Import Measures Act, the Tribunal may obtain information that in its judgment is authentic, otherwise than under the sanction of an oath or affirmation, and use and act on the information.

(Conduct of proceedings)

35. Hearings before the Tribunal shall be conducted as informally and expeditiously as the circumstances and considerations of fairness permit.

(Fees for witnesses)

36. Every person summoned to attend before the Tribunal shall receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

(Publication of decisions)

37. The Tribunal shall cause notice of its decision in any proceedings held by it pursuant to any other Act of Parliament to be published forthwith in the Canada Gazette.

By-laws, Rules and Regulations

(By-laws)

38. (1) The Tribunal may make by-laws respecting the calling of meetings of the Tribunal and the conduct of business at meetings of the Tribunal.

(Quorum)

(2) A majority of the permanent members in office shall constitute a quorum of the Tribunal for the purpose of making by-laws under subsection (1).

(Rules)

39. (1) The Tribunal may, after consultation with the Minister and with the approval of the Governor in Council, make rules, not inconsistent with this or any other Act of Parliament,

(a) respecting the sittings of the Tribunal,

(b) for the purpose of ensuring that a conflict of interest will not be created by reason of the assignment of any member to sit at hearings of the Tribunal or to hear, determine and deal with a matter before the Tribunal and generally for the prevention of conflicts of interest;

(c) specifying any additional information that shall accompany a complaint filed under any of subsections 23(1) to (1.1), 30.01(2) and 30.11(1) or an extension request filed under subsection 30.0.4(1); and

(d) generally, governing the proceedings, practice and procedures of the Tribunal.

(Quorum)

(2) A majority of the permanent members in office shall constitute a quorum for the purpose of making rules under subsection (1).

R.S., 1985. c. 47 (4th Supp.), s. 39; 1988, c. 65, s. 59(E); 1993, c. 44, s. 45; 1994. c. 47, s. 41.

(Regulations)

40. The Governor in Council may make regulations

(a) respecting the matters to be addressed or examined by the Tribunal in an inquiry commenced under this Act;

- (a.1) respecting the number of members that constitute a quorum for the purposes of
- (i) hearing, determining and dealing with appeals referred to in paragraph 16(c),
 - (ii) conducting inquiries and reporting on matters referred to the Tribunal pursuant to section 18 or 19, or
 - (iii) reviewing and reporting on developments and providing advice pursuant to section 19.02;
- (b) defining the expressions "domestic production" and "like or directly competitive goods" for the purposes of this Act and providing factors for determining under this Act whether domestic producers of like or directly competitive goods are adjusting;
- (c) defining the expression "other interested party" for the purposes of any provision of this Act;
- (d) defining the expression "procurement process" for the purposes of this Act;
- (e) designating departments, Ministries of State, bodies or offices for the purposes of the definition "government institution" in section 30.1;
- (e) designating contracts or classes of contracts for the purposes of the definition "designated contract" in section 30.1;
- (f.1) determining, for the purposes of sections 30.1 to 30.19, whether a bidder or prospective bidder on a designated contract has standing to be a potential supplier;

(g) respecting the filing of complaints under subsection 30.11(1), including any conditions that must be met before a complaint may be filed and the time within which and manner in which it must be filed;

(h) requiring fees to be paid on the filing of a complaint under subsection 30.11(1) and prescribing those fees or the manner of determining those fees;

(i) respecting the conditions that must be met before the Tribunal may begin an inquiry into a complaint filed under subsection 30.11(1) and the matters to be addressed or examined by the Tribunal in the inquiry;

(j) prescribing, for the purposes of subsection 30.14(2), the procedures and other requirements to be observed in respect of any contract or class of contracts;

(k) respecting the recommendations and orders that the Tribunal may make under section 30.15 and the extent, if any, to which a government institution must implement the Tribunal's recommendations pursuant to section 30.18;

(l) respecting the awarding of costs by the Tribunal under section 30.16, including the maximum amount that may be awarded in relation to any item of costs, and determining by whom and to whom any costs are to be paid and by whom they are to be taxed and allowed;

(m) prescribing any other matter or thing that, by this Act, is to be or may be prescribed; and

(n) generally, for carrying out the purposes and provisions of this Act.

R.S., 1985, c. 47 (4th Supp.), s. 40; 1993, c. 44, s. 46; 1994, c. 47, s. 42.

(Annual report)

41. The Tribunal shall, within three months after the end of each fiscal year, submit to the Minister a report relating to the activities of the Tribunal for that fiscal year.

(Tabling of report)

42. The Minister shall cause a copy of each report submitted to the Minister pursuant to section 41 to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is so submitted.

Disclosure of Information

(Definition of "information")

43. In sections 44 to 49, "information" includes evidence.

(Information to be disclosed)

44. Where information is provided to the Tribunal for the purposes of any proceedings before the Tribunal, every party to the proceedings has, unless the information is information to which subsection 45(1) applies, a right, on request, to examine the information during the normal business hours of the Tribunal and a right, on payment of the prescribed fee, to be provided with copies of any such information that is in documentary form or in any other form in which it may be readily and accurately copied.

(Information to be disclosed)

44.1 (1) Where information is provided to the Tribunal for the purposes of proceedings before the Tribunal under the Special Import Measures Act in respect of goods imported from a NAFTA country, other than proceedings

under section 33, subsection 34(1), section 35 or subsection 45(1) or 61(1) of that Act, the Secretary of the Tribunal shall, on request, provide the government of that country with copies of any such information that is in documentary form or in any other form in which it may be readily and accurately copied, unless the information is information to which subsection 45(1) of this Act or subsection 84(1) of that Act applies.

(Definition of "government")

(2) For the purposes of subsection (1), "government" has the meaning assigned to the expression "government of a NAFTA country" by subsection 2(1) of the Special Import Measures Act.

1993, c. 44, s. 47; 1994, c. 47, s. 43.

(Information not to be disclosed)

45. (1) Where a person designates information as confidential pursuant to paragraph 46(1)(a) and that designation is not withdrawn by that person, no member and no person employed in the public service of Canada who comes into possession of that information while holding that office or being so employed shall, either before or after ceasing to hold that office or being so employed, knowingly disclose that information, or knowingly allow it to be disclosed, to any other person in any manner that is calculated or likely to make it available for the use of any business competitor or rival of any person to whose business or affairs the information relates.

(Disclosure of summary or statement)

(2) Subsection (1) does not apply in respect of any non-confidential edited version or non-confidential summary of information or statement referred to in paragraph 46(1)(b).

(Disclosure to counsel)

(3) Notwithstanding subsection (1), information to which that subsection applies that has been provided to the Tribunal in any proceedings before the Tribunal may be disclosed by the Tribunal to counsel for any party to those proceedings or to other proceedings arising out of those proceedings for use by that counsel only in those proceedings, subject to such conditions as the Tribunal considers are reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who provided the information to the Tribunal, be disclosed by counsel to any person in any manner that is calculated or likely to make it available to

(a) any party to the proceedings or other proceedings, including a party who is represented by that counsel; or

(b) any business competitor or rival of any person to whose business or affairs the information relates.

(Definition of "counsel")

(4) In subsection (3), "counsel", in relation to a party to proceedings, includes any person, other than a director, servant or employee of the party, who acts in the proceedings on behalf of the party.

R.S., 1985, c. 47 (4th Supp.), s. 45; 1994, c. 47, s. 44.

(Designation of information as confidential)

46. (1) Where a person who provides information to the Tribunal for the purposes of proceedings before the Tribunal wishes some or all of the information to be kept confidential, the person shall submit to the Tribunal, at the time the information is provided,

(a) a statement designating as confidential the information that the person wishes to be kept confidential, together with an explanation as to why that information is designated as confidential; and

(b) a non-confidential edited version or non-confidential summary of the information designated as confidential pursuant to paragraph (a) in sufficient detail to convey a reasonable understanding of the substance of the information or a statement

(i) that such a non-confidential edited version or non-confidential summary cannot be made, or

(ii) that such a non-confidential edited version or non-confidential summary would disclose facts that the person has a proper reason for wishing to keep confidential,

together with an explanation that justifies the making of the statement.

(Interpretation)

(2) A person who designates information as confidential pursuant to paragraph (1)(a) fails to comply with paragraph (1)(b) where

(a) the person does not provide the non-confidential edited version, the non-confidential summary or the statement referred to in paragraph (1)(b);

(b) the person provides a non-confidential edited version or a summary of the information designated as confidential pursuant to paragraph (1)(a) but the Tribunal is satisfied that it does not comply with paragraph (1)(b);

(c) the person provides a statement referred to in paragraph (1)(b), but does not provide an explanation that justifies the making of the statement; or

(d) the person provides a statement referred to in paragraph (1)(b), but the Tribunal is satisfied that the explanation given as justification for the making of the statement does not justify the making thereof.

R.S., 1985, c. 47 (4th Supp.), s. 46; 1994, c. 47, s. 45.

(Where there has been failure to comply)

47. (1) Where a person has designated information as confidential pursuant to paragraph 46(1)(a) and the Tribunal considers that such a designation is warranted, but the person has failed to comply with paragraph 46(1)(b), the Tribunal shall cause the person to be informed of the failure, of the ground on which the person has so failed and of the application of subsection 48(3) if the person fails to take, within the time limited therefor by or pursuant to that subsection, such action as is necessary for the person to take in order to comply with paragraph 46(1)(b).

(Where Tribunal considers designation unwarranted)

(2) Where a person has designated information as confidential pursuant to paragraph 46(1)(a) and the Tribunal considers that by reason of its nature, extent or availability from other sources or of the failure of the person to provide any explanation as to why it was designated as confidential, the designation of that information as confidential is unwarranted, the Tribunal shall cause the person

(a) to be notified of the fact that the Tribunal considers the designation to be unwarranted and of its reasons for so considering; and

(b) where the person has failed to comply with paragraph 46(1)(b), to be informed as provided in subsection (1).

(Withdrawal of designation of submission of explanation)

48. (1) Where a person is notified pursuant to paragraph 47(2)(a) with respect to any information that the person has designated as confidential pursuant to paragraph 46(1)(a), the person may, within fifteen days after being so notified,

(a) withdraw the designation, or

(b) submit to the Tribunal an explanation or further explanation as to why the information was designated as confidential and, where the person does neither of those things within those 15 days, that information shall not thereafter be taken into account by the Tribunal in the proceedings for the purposes for which it was provided, unless the Tribunal obtains that information from a source other than that person.

(Tribunal to reconsider)

(2) Where, pursuant to subsection (1), a person submits to the Tribunal, within the fifteen days referred to in that subsection, an explanation or further explanation as to why the information was designated as confidential, the Tribunal shall again consider whether, taking into account that explanation or further explanation, the designation of the information as confidential is warranted and, if it decides that it is not warranted, shall cause the person to be notified that the information will not thereafter be taken into account by the Tribunal in the proceedings for the purposes for which it was provided, in which case the information shall not thereafter be taken into account by the Tribunal in those proceedings, unless the Tribunal obtains the information from a source other than that person.

(Where failure to comply not rectified)

(3) Subject to subsection (4), where a person who has been informed pursuant to section 47 that the person has failed to comply with paragraph 46(1)(b) with respect to any information does not, within fifteen days after being so informed or within such longer time not exceeding thirty days after being so informed as the Tribunal, either before or after the expiration of the fifteen days, in its discretion allows, take such action as is necessary for the person to take in order to comply with paragraph 46(1)(b), the Tribunal shall cause the person to be notified that the information will not thereafter be taken into account by the Tribunal in the proceedings for the purposes for which it was provided, in which case the information shall not thereafter be taken into account by the Tribunal in those proceedings, unless the Tribunal obtains the information from a source other than that person.

(Exception)

(4) Subsection (3) does not apply in respect of any information that the Tribunal is prohibited by subsection (1) or (2) from taking into account in the proceedings for the purposes for which the information was provided.

(Other information)

49. Where

(a) information given or elicited in the course of any proceedings before the Tribunal is, in the opinion of the Tribunal, in its nature confidential, or

(b) the Deputy Minister of National Revenue indicates to the Tribunal in writing that subsection 84(1) of the Special Import Measures Act applies to information filed with the Secretary pursuant to paragraph 38(3)(b) of that Act,

the information shall not knowingly be disclosed by any member or person employed in the public service of Canada who comes into possession of the information in any manner that is calculated or likely to make it available for the use of any business competitor or rival of any person to whose business or affairs the information relates.

R.S., 1995, c. 47 (4th Supp.), s. 49; 1994, c. 13, s. 7.

REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL

Repeals

50. and 51. [Repeals]

Consequential Amendments

52. [Amendments]

Transitional

(Definitions)

53. In this section and sections 54 to 60,

("Canadian Import Tribunal" "Tribunal canadien des importations")

"Canadian Import Tribunal" means the Canadian Import Tribunal established by subsection 63(1) of the Special Import Measures Act, as it existed on the day immediately preceding the commencement day;

("commencement day" "date de référence")

"commencement day" means the day on which this section comes into force;

("former authority" "ancien organisme")

"former authority" means the Canadian Import Tribunal, the Tariff Board or the Textile and Clothing Board;

("Tariff Board" "Commission du tarif")

"Tariff Board" means the Tariff Board established by subsection 3(1) of the Tariff Board Act, as it existed on the day immediately preceding the commencement day;

("Textile and Clothing Board" "Commission du textile et du vêtement")

"Textile and Clothing Board" means the Textile and Clothing Board established by subsection 3(1) of the Textile and Clothing Board Act, as it existed on the day immediately preceding the commencement day.

(Members of Tariff Board cease to hold office)

54. (1) Subject to subsection (2), the members of the Tariff Board shall cease to hold office on the commencement day.

(Continuing jurisdiction)

(2) Subject to section 59 but otherwise notwithstanding any Act of Parliament, the members of the Tariff Board continue to have jurisdiction with respect to

(a) any inquiry commenced by the Tariff Board under section 8 of the Tariff Board Act that was under way on the day immediately preceding the commencement day,

(b) any appeal made to the Tariff Board under section 61 of the Special Import Measures Act, section 67 of the Customs Act or section 81.19, 81.21, 81.22 or 81.23 of the Excise Tax Act that was in the course of being heard on the day immediately preceding the commencement day, or that had been heard before the commencement day but in respect of which a decision, order, finding or declaration had not been rendered before that day,

(c) any application made to the Tariff Board under section 81.32 of the Excise Tax Act that was pending on the day immediately preceding the commencement day,

(d) any question referred to the Tariff Board under section 70 of the Customs Act that was in the course of being considered on the day immediately preceding the commencement day, or that had been considered

before the commencement day but in respect of which an opinion had not been rendered before that day, and

(e) any matter referred to in section 13 or 63 of the Energy Administration Act that was in the course of being heard on the day immediately preceding the commencement day, or that had been heard before the commencement day but in respect of which a decision or declaration had not been rendered before that day, and, for the purpose only of disposing of those matters, may exercise such of the powers and perform such of the duties as were, before the commencement day, vested in them under any Act of Parliament as members of the Tariff Board.

(Procedure)

(3) Each matter referred to in subsection (2) shall be disposed of in accordance with the Tariff Board Act or other Act of Parliament under which the matter came before the Tariff Board and the rules and regulations thereunder, as they read on the day immediately preceding the commencement day.

(Members of Textile and Clothing Board cease to hold office)

55. (1) Subject to subsection (2), the members of the Textile and Clothing Board shall cease to hold office on the commencement day.

(Continuing jurisdiction)

(2) Subject to section 59 but otherwise notwithstanding any Act of Parliament the members of the Textile and Clothing Board continue to have jurisdiction with respect to any inquiry commenced by the Textile and Clothing Board under section 11 or 23 of the Textile and Clothing Board Act that was in the course of being completed on the day immediately preceding the commencement day and, for the purpose only of completing such an inquiry, may exercise such of the powers and perform such of the

duties as were, on the day immediately before the commencement day, vested in them under the Textile and Clothing Board Act.

(Procedure)

(3) An inquiry referred to in subsection (2) shall be completed in accordance with the Textile and Clothing Board Act and the rules thereunder, as they read on the day immediately preceding the commencement day.

(Secretary of Canadian Import Tribunal ceases to hold office)

56. The Secretary of the Canadian Import Tribunal shall cease to hold office on the commencement day.

(Members of Canadian Import Tribunal cease to hold office)

57. (1) Subject to subsection (2), the members of the Canadian Import Tribunal shall cease to hold office on the commencement day.

(Continuing jurisdiction)

(2) Subject to section 59 but otherwise notwithstanding any Act of Parliament, the members of the Canadian Import Tribunal continue to have jurisdiction with respect to any of the following matters pending before the Canadian Import Tribunal on the day immediately preceding the commencement day:

(a) inquiries under section 42 or 48 of the Special Import Measures Act,

(b) references under section 33, 34 or 35 of the Special Import Measures Act,

(c) requests for rulings under subsection 89(1) of the Special Import Measures Act, and

(d) reviews under subsection 76(2) of the Special Import Measures Act,

and, for the purpose only of disposing of those matters, may exercise such of the powers and perform such of the duties as were, before the commencement day, vested in them under any Act of Parliament as members of the Canadian Import Tribunal.

(Procedure)

(3) Each matter referred to in subsection (2) shall be disposed of in accordance with the Special Import Measures Act and the rules and regulations thereunder, as they read on the day immediately preceding the commencement day.

(Inquiries under Special Import Measures Act)

58. (1) Subject to section 59 and notwithstanding the Special Import Measures Act, the members of the Canadian Import Tribunal have jurisdiction

(a) to make a report referred to in paragraph 45(1)(a) of that Act concerning goods with respect to which, as a result of an inquiry referred to in section 42 of that Act, the Canadian Import Tribunal has made an order or finding described in any of sections 3 to 6 of that Act before the commencement day and with respect to which the Canadian Import Tribunal has not previously made a report pursuant to paragraph 45(1)(a) of that Act;

(b) to make a report referred to in paragraph 45(1)(a) of that Act concerning goods with respect to which, as a result of an inquiry referred to in section 42 of that Act, the members, pursuant to their jurisdiction under section 57, have made an order or finding described in any of sections 3 to 6 of that Act on or after the commencement day;

(c) to make an inquiry referred to in section 42 of that Act in relation to goods with respect to which any question has been referred to the Canadian Import Tribunal under section 33, 34 or 35 of that Act before the commencement day and with respect to which the Deputy Minister of National Revenue has, pursuant to subsection 38(3) of that Act, caused notice of a preliminary determination of dumping or subsidizing to be filed with the Secretary of the Canadian Import Tribunal before the commencement day or with the Secretary of the Canadian International Trade Tribunal on or after the commencement day;

(d) to make an order or finding referred to in section 43 of that Act in relation to goods with respect to which an inquiry is made pursuant to paragraph (c); and

(e) to make a report referred to in paragraph 45(1)(a) of that Act concerning goods with respect to which, as a result of an inquiry made by the members pursuant to paragraph (c), the members, pursuant to their jurisdiction under paragraph (d), have made an order or finding described in any of sections 3 to 6 of that Act.

(Powers)

(2) For the purpose of making a report, inquiry, order or finding referred to in subsection (1), the members of the Canadian Import Tribunal have and may exercise such of the powers and perform such of the duties and functions as are vested in the Canadian International Trade Tribunal.

(Deemed to be made by Tribunal)

(3) A report, inquiry, order or finding made by the members of the Canadian Import Tribunal pursuant to their jurisdiction under subsection (1) shall, for the purposes of the Special Import Measures Act, be deemed to have been made by the Canadian International Trade Tribunal.

R.S., 1995, c. 47 (4th Supp.), s. 58; 1994, c. 13, s. 7.

(Limitation period)

59. (1) Where any matter referred to in subsection 54(2), 55(2) or 57(2) is not disposed of by the members of the former authority within whose jurisdiction the matter lies within one year after the commencement day or where, on the expiration of one year after the commencement day, any proceedings in a matter commenced by the members of the Canadian Import Tribunal pursuant to their jurisdiction under section 58 are pending before those members, the proceedings with respect to the matter shall be taken up and continued by the Tribunal on such terms and conditions as the Chairman may specify for the protection and preservation of the rights and interests of the parties or, where the Chairman determines that any such proceedings should not be so taken up and continued, those proceedings shall be terminated.

(Supervision by Chairman)

(2) The Chairman has supervision over and direction of the work of the members of a former authority having jurisdiction under subsection 54(2), 55(2), 57(2) or 58(1).

(Remuneration)

(3) Each member of a former authority having jurisdiction under subsection 54(2), 55(2), 57(2) or 58(1), other than a person appointed to the Tribunal, shall be paid such remuneration for services under this Act as is fixed by the Governor in Council.

(Expenses)

(4) Each member of a former authority having jurisdiction under subsection 54(2), 55(2), 57(2) or 58(1) is entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's

ordinary place of residence in the course of performing duties under this Act.

(Other proceedings)

60. All matters pending before the Tariff Board or the Canadian Import Tribunal on the day immediately preceding the commencement day and for which the members thereof do not have jurisdiction under subsection 54(2), 55(2) or 57(2) shall be taken up and continued by the Tribunal under and in conformity with this Act.

(Continuation of certain rules)

61. All rules made by the Canadian Import Tribunal under section 70 of the Special Import Measures Act, as it read on the day immediately preceding the commencement day, shall be deemed to have been made under section 39 of this Act and shall, to the extent that they are not inconsistent with this Act, continue in force until they are revoked or amended under section 39.

(Continuation of previous orders, etc.)

62. Every decision, order, finding, declaration, ruling or other instrument issued, rendered or made under any Act of Parliament by a former authority and that is in force on the day immediately preceding the commencement day shall, to the extent that it is not inconsistent with this or any other Act of Parliament continue in force and have the same force and effect as if it were issued, rendered or made by the Tribunal.

COMING INTO FORCE

(Coming into force)

*63. (1) Sections 1 to 15 and 38 to 40, or any of those sections, shall come into force on a day or days to be fixed by order of the Governor in Council.

(Idem)

(2) Sections 16 to 37 and 41 to 62 shall come into force on a day to be fixed by order of the Governor in Council.

*[Note: Sections 1 to 15 and 38 to 40 in force 15 September 1988, see SI/88-139; sections 16 to 37 and 41 to 62 in force 31 December 1988, see SI/89-3.]

SCHEDULE

[Amendments]

REGULATIONS RESPECTING SPECIAL IMPORT MEASURES

Short Title

1. These Regulations may be cited as the Special Import Measures Regulations.

Interpretation

2. In these Regulations,

"Act" means the Special Import Measures Act; (Loi)

"American Secretariat" means the United States section of the Secretariat provided for by Article 1909 of the Free Trade Agreement; (secrétariat américain)

"industrial research" means planned research or critical investigation aimed at the discovery of new knowledge with the objective that that knowledge may be useful in the development of new products, processes or services or in bringing about a significant improvement in existing products, processes or services; (recherche industrielle)

"officer" means an officer as defined in subsection 2(1) of the Customs Act; (agent)

"pre-competitive development activity" means

(a) the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services, whether intended for sale or use, including the creation of a first prototype that cannot be used for commercial purposes,

(b) the conceptual formulation and design of products, processes or services, or

(c) initial demonstrations or pilot projects that cannot be used or converted for industrial application or commercial exploitation,

but does not include routine or periodic alterations to existing products, production lines, manufacturing processes and services and to other ongoing operations, even though the alterations may represent improvements; (activité de développement préconcurrentielle)

"production" includes manufacturing, growing and processing; (production)

"start-up period of production" means the period that

(a) begins on the date that

(i) new production facilities are first used for commercial production, or

(ii) production first commences for commercial purposes of a product that is new, or substantially different from products previously produced by the producer, and that requires production equipment or technology that is new or substantially different from production equipment or technology previously used by the producer, and

(b) ends on the date that the level of production is no longer limited to a significant degree owing to technical difficulties related to the use of new production facilities or the production of a new or substantially different product. (période de démarrage de la production)

Application

2.1 The operation of the definition "American Secretariat" in section 2, of Part II.1 and of sections 46 to 49 is suspended for the period during which subsections 56(1.02), 58(1.2) and 59(3.3) and section 77.038 of the Act are in force, except in respect of a definitive decision that was made before the coming into force of subsections 56(1.02), 58(1.2) and 59(3.3) and section 77.038 of the Act.

PART I

NORMAL VALUE AND EXPORT PRICE

Normal Value Adjustments

Quantitative Adjustments

3. For the purposes of sections 15, 19 and 20 of the Act, the price of like goods shall be adjusted to reflect the quantity discount generally granted in connection with a sale of like goods in the same or substantially the same quantities as the quantities of the goods sold to the importer in Canada.

4. Where the quantity discount referred to in section 3 cannot be ascertained, the price of like goods shall be adjusted by

(a) adding thereto the amount that would reflect the costs that would be incurred by the exporter, or

(b) deducting therefrom the amount that would reflect the savings that would accrue to the exporter,

if the like goods were sold by the exporter in the same or substantially the same quantities as the quantities of goods sold to the importer in Canada.

Qualitative Differences

5. For the purposes of sections 15, 19 and 20 of the Act, where the goods sold to the importer in Canada and the like goods differ

(a) in their quality, structure, design or material,

(b) in their warranty against defect or guarantee of performance,

(c) in the time permitted from their date of order to the date of their scheduled shipment, or

(d) in their conditions of sale, other than the conditions referred to in paragraphs (b) or (c) or any conditions that result in any adjustment being made pursuant to any other section of these Regulations,

and that difference would be reflected in a difference between the price of the like goods and the price at which goods that are identical in all respects, including conditions of sale, to the goods sold to the importer in Canada would be sold in the country of export, the price of the like goods shall be adjusted

(e) where the price of the like goods is greater than the price of the identical goods, by deducting therefrom the estimated difference between those prices, and

(f) where the price of the like goods is less than the price of the identical goods, by adding thereto the estimated difference between those prices.

Discounts

6. For the purposes of sections 15, 19 and 20 of the Act, where any rebate, deferred discount or discount for cash is generally granted in relation to the sale of like goods in the country of export, the price of the like goods shall be adjusted by deducting therefrom the amount of any such generally granted rebate or discount for which the sale of the goods to the importer in Canada would qualify if that sale occurred in the country of export.

Delivery Costs

7. For the purposes of sections 15 and 19 and subparagraph 20(c)(i) of the Act, where the like goods are sold at a delivered price, the price of the like goods shall be adjusted by deducting therefrom the cost of their delivery.

8. For the purposes of sections 15 and 19 and subparagraph 20(c)(i) of the Act, where like goods are generally sold at a common delivered price when delivered to any destination within a zone that, under the ordinary commercial practice of the vendor of the like goods, is considered to be a common transportation zone, the price of the like goods shall be adjusted by deducting therefrom an amount that reflects the average cost incurred by the vendor in delivering the like goods to destinations in that zone.

Substitution of Trade Level

9. For the purposes of sections 15 and 19 and subparagraph 20(c)(i) of the Act, where purchasers of like goods who are at the trade level nearest and subsequent to that of the importer in Canada have been substituted for purchasers who are at the same or substantially the same trade level as that of the importer, the price of the like goods shall be adjusted by deducting therefrom

(a)the amount of any costs, charges or expenses incurred by the vendor of the like goods in selling to purchasers who are at the trade level nearest and subsequent to that of the importer that result from activities that would not be performed if the like goods were sold to purchasers who are at the same or substantially the same trade level as that of the importer; or

(b)in the absence of information relating to the costs, charges and expenses mentioned in paragraph (a), an amount not exceeding the discount that is generally granted on the sale of like goods by other vendors in the country of export to purchasers who are at the same or substantially the same trade level as the importer.

Taxes and Duties

10. For the purposes of sections 15, 19 and 20 of the Act, where any taxes or duties that are borne by like goods or any materials or components forming a part thereof are not borne by the goods sold to the importer in Canada, the price of the like goods shall be adjusted by deducting therefrom the amount of those taxes or duties.

Cost of Production and Other Costs

11.(1) For the purposes of paragraph 19(b) and subparagraph 20(c)(ii) of the Act,

(a)subject to section 12 of these Regulations, the expression "cost of production", in relation to any goods, means the aggregate of all costs that are

(i)attributable to, or in any manner related to, the production of the goods, or

(ii)directly attributable to the design or engineering of the goods;

(b)the expression "a reasonable amount for profits", in relation to any goods, means an amount equal to

(i)where the exporter has made in the country of export a number of sales of like goods for use in the country of export, and where those sales when taken together produce a profit and are such as to permit a proper comparison, the weighted average profit made on the sales,

(ii)where subparagraph (i) is not applicable but the exporter has made in the country of export a number of sales of goods that are of the same general category as the goods sold to the importer in Canada and are for use in the country of export, and where those sales when taken together produce a profit and are such as to permit a proper comparison, the weighted average profit made on the sales,

(iii)where subparagraphs (i) and (ii) are not applicable but producers, other than the exporter, have made in the country of export a number of sales of like goods for use in the country of export, and where those sales when taken together produce a profit and are such as to permit a proper comparison, the weighted average profit made on the sales,

(iv)where subparagraphs (i) to (iii) are not applicable but producers, other than the exporter, have made in the country of export a number of sales of goods that are of the same general category as the goods sold to the importer in Canada and are for use in the country of export, and where those sales when taken together produce a profit and are such as to permit a proper comparison, the weighted average profit made on the sales,

(v)where subparagraphs (i) to (iv) are not applicable but the exporter has made in the country of export a number of sales of goods that are of the group or range of goods that is next largest to the category referred to in subparagraph (iv) and are for use in the country of export, and where those sales when taken together produce a profit and are such as to permit a proper comparison, the weighted average profit made on the sales, or

(vi) where subparagraphs (i) to (v) are not applicable but producers, other than the exporter, have made in the country of export a number of sales of goods that are of the group or range of goods that is next largest to the category referred to in subparagraph (iv) and are for use in the country of export, and where those sales when taken together produce a profit and are such as to permit a proper comparison, the weighted average profit made on the sales; and

(c) the expression "a reasonable amount for administrative, selling and all other costs" in relation to any goods, means

(i) an amount equal to all administrative, selling and other costs, including the costs of any warranty against defect or guarantee of performance and any design or engineering costs, that are not included in the cost of production but are reasonably attributable to the production and domestic sales of like goods made by the exporter, that satisfy the greatest number of the conditions set out in paragraphs 15(a) to (e) of the Act, taking into account subsection 16(1) of the Act, or

(ii) where an amount cannot be determined under subparagraph (i), an amount equal to all administrative, selling and other costs, including the costs of any warranty against defect or guarantee of performance and any design or engineering costs, that are not included in the cost of production but are reasonably attributable to the production and sale of the goods.

(2) For the purposes of subparagraphs (1)(b)(i), (ii) and (v), where the exporter is not the producer of the goods referred to in those subparagraphs, a reasonable amount for profits shall also include the amount of profits earned by the producer and any subsequent vendors in respect of sales of those goods to the exporter.

(3) For the purpose of subparagraph (1)(c)(i), where the exporter is not the producer of the goods referred to in that subparagraph, a reasonable amount for administrative, selling and all other costs shall also include the amounts

incurred by the producer and any subsequent vendors in respect of sales of those goods to the exporter.

11.1 For the purpose of subsection 16(3) of the Act,

(a) the cost of production, in relation to any goods, shall, subject to section 12, be calculated by aggregating all costs that are

(i) attributable to, or in any manner related to, the production of the goods, or

(ii) directly attributable to the design or engineering of the goods; and

(b) the administrative, selling and all other costs, in relation to any goods, shall be calculated by aggregating all administrative, selling and other costs, including the cost of any warranty against defect or guarantee of performance and any design or engineering costs that are not included in the cost of production but are attributable to the production and sale of the goods.

12. For the purposes of subparagraphs 11(1)(a)(ii) and 11.1(a)(ii), where the costs that are directly attributable to the design or engineering of the goods (in this section referred to as "first-mentioned goods") cannot be determined, but the costs that are directly attributable to the design or engineering of goods of the same general category as the first-mentioned goods, produced and sold by any exporter or producer, can be determined, the costs that are directly attributable to the design or engineering of the first-mentioned goods shall be considered to be the amount that reflects the cost of the design or engineering of the goods of the same general category, such amount being adjusted to reflect the value of any differences in the design or engineering between the first-mentioned goods and the goods of the same general category.

13. For the purposes of paragraph 11(b),

(a) sales that are such as to permit a proper comparison are sales, other than sales referred to in paragraph 16(2)(a) or (b) of the Act, that satisfy the greatest number of the conditions set out in paragraphs 15(a) to (e) of the Act, taking into account subsection 16(1) of the Act;

(b) the price of like goods shall be adjusted in the manner provided for in sections 3 to 10; and

(c) the price of goods of the same general category or of goods of the group or range of goods that is next largest to the category referred to in subparagraph 11(b)(iv) shall be adjusted in the manner provided for in sections 3 to 10, and for that purpose the expression "like goods" shall be read as "goods of the same general category" or "goods of the group or range of goods that is next largest to the category referred to in subparagraph 11(b)(iv)", as the case may be, wherever that expression occurs in those sections.

13.1 (1) Subject to subsection (2), for the purpose of section 23.1 of the Act, the cost of production of goods, and the administrative, selling and all other costs with respect to the goods, for a start-up period of production shall be determined in accordance with sections 11 and 11.1.

(2) Where any of the costs determined under subsection (1) are affected by start-up operations that limit the level of production associated with the initial phases of commercial production owing to technical difficulties during the start-up period of production that are related to the use of new production facilities or the production of a new or substantially different product, the affected costs shall be adjusted on the basis of the costs that exist at the end of the start-up period of production or, if the period extends beyond the investigation period, on the basis of the costs that exist at the end of that period.

State Trading Countries

14. For the purpose of determining the normal value of any goods pursuant to paragraph 20(c) of the Act, sections 4 to 6, 9 and 11 shall be read with the substitution of

(a) the expression "country of production" for the expression "country of export", wherever that expression occurs therein; and

(b) the word "producer" for the word "exporter", wherever that word occurs therein.

15. For the purpose of determining the normal value of any goods pursuant to paragraph 20(d) of the Act, sections 4 to 6 shall be read with the substitution of

(a) the expression "vendor in Canada of the imported like goods" for the word "exporter", wherever that word occurs therein; and

(b) the word "Canada" for the expression "the country of export", wherever that expression occurs therein.

16. For the purpose of determining the normal value of any goods pursuant to paragraph 20(d) of the Act, the price of like goods sold in Canada shall be adjusted by deducting therefrom an amount equal to the sum of

(a) all costs, including any duties and taxes, that result from the importation of the like goods or their sale by the importer to the purchaser in Canada;

(b) the amount of profit, determined in accordance with section 17, made by the importer of the like goods on their sale;

(c) all costs, charges and expenses incurred by the importer or exporter of the like goods, or any other person, in preparing the like goods for shipment to Canada that are additional to the costs, charges and expenses generally incurred on sales of the like goods for domestic consumption in the country of export; and

(d)all other costs, charges and expenses incurred by the exporter or importer of the like goods, or any other person, that result from the exportation of the like goods or arise from their shipment to Canada.

17. For the purposes of paragraph 16(b), the amount of profit made by an importer on the sale of like goods in Canada is

(a)the amount of profit that generally results from sales of like goods by vendors in Canada who are at the same or substantially the same trade level as the importer of the like goods to purchasers in Canada who are not associated with those vendors;

(b)if the amount described in paragraph (a) cannot be determined, the amount of profit that generally results from sales of goods of the same general category as the like goods by vendors in Canada who are at the same or substantially the same trade level as the importer of the like goods to purchasers in Canada who are not associated with those vendors; or

(c)where the amounts described in paragraphs (a) and (b) cannot be determined, the amount of profit that generally results from sales of goods that are of the group or range of goods that is next largest to the category referred to in paragraph (b), by vendors in Canada who are at the same or substantially the same trade level as the importer, to purchasers in Canada who are not associated with those vendors.

Discount Rate for Normal Value

18. For the purposes of subsection 21(1) of the Act, where it is not possible to ascertain the interest rate referred to in clause 21(1)(a)(ii)(A) of the Act or there is no such interest rate, the interest rate to be selected is

(a)the interest rate prevailing, in the country in which the like goods were sold, at the date of the sale of the like goods, for commercial loans available in that country in the same currency in which the payments for the like

goods are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms on which the sale was made;

(b)where the interest rate described in paragraph (a) cannot be ascertained or where there is no such interest rate, the lowest interest rate prevailing, in any country other than the country in which the like goods were sold, at the date of the sale of the like goods, for commercial loans available in that other country in the same currency in which the payments for the like goods are expressed and on credit terms, other than the interest rate, comparable to the credit terms on which the sale was made;

(c)where the interest rates described in paragraphs (a) and (b) cannot be ascertained or where there are no such interest rates, the lowest interest rate prevailing, in any country other than the country in which the like goods were sold, at the date of the sale of the like goods, for commercial loans available in that other country in the same currency in which the payments for the like goods are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms on which the sale was made;

(d)where the interest rates described in paragraphs (a) to (c) cannot be ascertained or where there are no such interest rates, the interest rate equal to the average yield in the year preceding the sale of the like goods on securities, for terms not exceeding one year, issued by the government that issues the currency in which the payments for the like goods are expressed;
or

(e)where the interest rates described in paragraphs (a) to (d) cannot be ascertained or where there are no such interest rates, the average interest rate paid on Special Drawing Rights held by the International Monetary Fund in the year preceding the sale of the like goods.

19. Where the normal value of any goods is to be determined under paragraph 20(d) of the Act, section 18 of these Regulations shall be read with the substitution of

(a)the word "Canada" for the expressions "the country in which the like goods were sold" and "that country", wherever those expressions occur therein; and

(b)the expression "sale of the imported like goods" for the expression "sale of the like goods", wherever that expression occurs therein.

Export Price Adjustments

Profits

20. For the purpose of subparagraph 25(1)(c)(ii) of the Act, the expression "an amount for profit", in relation to a sale of goods by an importer, means the amount of profit that would be made in the ordinary course of trade on the sale of the goods.

21. For the purpose of subparagraph 25(1)(d)(i) of the Act, the expression "an amount for profit", in relation to any assembled, packaged or otherwise further manufactured goods or any goods into which imported goods have been incorporated, means the amount of profit that would be made in the ordinary course of trade on the sale of the goods.

22. For the purposes of sections 20 and 21, the amount of profit that would be made in the ordinary course of trade on the sale of the goods is

(a)the amount of profit that generally results from sales of like goods in Canada by vendors who are at the same or substantially the same trade level as the importer to purchasers in Canada who are not associated with those vendors;

(b)where the amount described in paragraph (a) cannot be determined, the amount of profit that generally results from sales of goods of the same general category in Canada by vendors who are at the same or substantially

the same trade level as the importer to purchasers in Canada who are not associated with those vendors; or

(c) where the amounts described in paragraphs (a) and (b) cannot be determined, the amount of profit that generally results from sales of goods that are of the group or range of goods that is next largest to the category referred to in paragraph (b), by vendors in Canada who are at the same or substantially the same trade level as the importer, to purchasers in Canada who are not associated with those vendors.

Discount Rate for Export Price

23. For the purposes of subsection 27(1) of the Act, where it is not possible to ascertain the interest rate referred to in clause 27(1)(a)(ii)(A) of the Act or there is no such interest rate, the interest rate to be selected is

(a) the interest rate prevailing, at the date of the sale of the goods to the importer in Canada, in the country in which the vendor is located, for commercial loans available in that country in the same currency in which the payments for the goods are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms on which the sale was made;

(b) where the interest rate described in paragraph (a) cannot be ascertained or where there is no such interest rate, the lowest interest rate prevailing, at the date of the sale of the goods to the importer in Canada, in any country other than the country in which the vendor is located, for commercial loans available in that other country in the same currency in which the payments for the goods are expressed and on credit terms, other than the interest rate, comparable to the credit terms on which the sale was made;

(c) where the interest rates described in paragraphs (a) and (b) cannot be ascertained or where there are no such interest rates, the lowest interest rate prevailing, at the date of the sale of the goods to the importer in Canada, in any country other than the country in which the vendor is located, for

commercial loans available in that other country in the same currency in which the payments for the goods are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms on which the sale was made;

(d)where the interest rates described in paragraphs (a) to (c) cannot be ascertained or where there are no such interest rates, the interest rate equal to the average yield in the year preceding the sale of the goods to the importer in Canada on securities, for terms not exceeding one year, issued by the government that issues the currency in which the payments for the goods are expressed; or

(e)where the interest rates described in paragraphs (a) to (d) cannot be ascertained or there are no such interest rates, the average interest rate paid on Special Drawing Rights held by the International Monetary Fund in the year preceding the sale of the goods to the importer in Canada.

24. Where an export price is determined under section 25 of the Act, section 23 of these Regulations shall be read with the substitution of

(a)the word "Canada" for the expressions "the country in which the vendor is located" and "that country", wherever those expressions occur therein; and

(b)the expression "sale of the goods by the importer in Canada" for the expression "sale of the goods to the importer in Canada", wherever that expression occurs therein.

Goods in Transit

25. For the purpose of subsection 30(1) of the Act, the normal value and export price of goods exported to Canada from one country but passing in transit through another country shall be determined as if the goods were shipped directly to Canada from the first-mentioned country if

(a) the goods are conveyed to Canada from the first-mentioned country on a through bill of lading to a consignee in Canada;

(b) the goods have not been entered for trade or consumption in an intermediate country or have not remained in an intermediate country for any purpose other than transshipment; and

(c) where requested by an officer, the importer of the goods submits

(i) the original bill of lading for the goods, or a certified copy of it, or

(ii) if the original bill of lading for the goods, or a certified copy of it, is not available, any other information or documents that are available to the importer for the purpose of determining the country of export of the goods.

Sustained Movement in the Rate of Exchange

25.1 (1) For the purpose of section 30.2 of the Act, where a sale of goods to an importer in Canada takes place during a period in which there is a sustained movement in the rate of exchange that results in an appreciation of the value of the foreign currency in which the normal value of the goods is denominated in terms of the currency in which the exporter's selling price of those goods is denominated, and the exporter's selling price of those goods is adjusted from the price prevailing 60 days before the date of the sale to reflect the sustained movement in the rate of exchange, the export price of the goods shall be adjusted by multiplying that price by the result obtained by dividing the prevailing rate of exchange in respect of the foreign currency for the date of sale, by the average of the rates of exchange in respect of that foreign currency prevailing for each of the 30 days before the 60th day before the date of sale.

(2) Where the exporter's selling price of the goods is denominated in Canadian dollars, the prevailing rate of exchange for the purpose of

subsection (1) shall be the rate of exchange referred to in section 5 of the Currency Exchange for Customs Valuation Regulations.

(3) Where the exporter's selling price of the goods is denominated in foreign currency, the prevailing rate of exchange for the purpose of subsection (1) shall be determined on the basis of rates of exchange referred to in section 5 of the Currency Exchange for Customs Valuation Regulations.

PART I.1

MARGIN OF DUMPING BASED ON PERCENTAGE OR SAMPLE

25.2 (1) For the purpose of subsection 30.3(3) of the Act, the margin of dumping in relation to the goods of an exporter that were not included in the percentage or sample and the goods of the exporter for which a margin of dumping was not determined in accordance with subsection 30.3(2) of the Act shall be equal to the weighted average margin of dumping established as a result of the application of sections 15 to 30 of the Act in respect of goods from that exporter that are included in the percentage or sample.

(2) Where a margin of dumping cannot be determined under subsection (1) because no goods from the exporter were included in the percentage or sample, the margin of dumping shall

(a) be equal to the weighted average of the margins of dumping established as a result of the application of sections 15 to 28 and 30 of the Act, excluding paragraph 25(1)(e), in respect of goods that are from the same country and are included in the percentage or sample;

(b) where a margin of dumping cannot be determined under paragraph (a), be equal to the weighted average of the margins of dumping established as a result of the application of sections 15 to 28 and 30 of the Act, excluding paragraph 25(1)(e), in respect of goods that are from all other countries

whose goods are under consideration and are included in a percentage or sample; or

(c) where a margin of dumping cannot be determined under paragraph (a) or (b), be determined in a reasonable manner based on the information available to the Deputy Minister.

(3) Any margin of dumping that is insignificant shall not be taken into account in a determination of the margin of dumping under subsection (2).

PART I.2

NON-ACTIONABLE SUBSIDIES

25.3 (1) For the purposes of paragraph (b) of the definition "non-actionable subsidy" in subsection 2(1) of the Act, a subsidy is a non-actionable subsidy where

(a) in the case of industrial research assistance, other than for civilian aircraft and civilian aircraft parts production, such assistance accounts for no more than 75 per cent of eligible costs in respect of industrial research;

(b) in the case of pre-competitive development assistance, other than for civilian aircraft and civilian aircraft parts production, such assistance accounts for no more than 50 per cent of eligible costs in respect of pre-competitive development activity;

(c) in the case of assistance to a disadvantaged region, such assistance

(i) is provided to an eligible disadvantaged region within the territory of the granting authority,

(ii) is not specific to an enterprise within a region referred to in subparagraph (i), and

(iii) is given pursuant to a generally applicable regional development policy framework within the territory of the granting authority;

(d) in the case of assistance for the adaptation of existing facilities to new environmental standards, such assistance

(i) is limited to facilities that, at the time the new environmental standards enter into force, have been in operation for at least two years,

(ii) is given only once,

(iii) accounts for no more than 20 per cent of the cost of the adaptation,

(iv) does not cover the cost of replacing or operating any equipment related to the adaptation, or the production, administrative, selling or other related costs, and

(v) is available to all persons who have facilities described in subparagraph (i) and for whom it would be practicable to install the equipment or implement the production processes necessary for the adaptation; and

(e) in the case of assistance for research activities conducted by institutions of higher education and independent research establishments, such assistance is for research that is

(i) aimed at the enlargement of general scientific and technical knowledge,

(ii) not directly linked to industrial or commercial objectives, and

(iii) conducted on an independent basis.

(2) For the purposes of paragraphs (1)(a) and (b), eligible costs, in respect of industrial research or pre-competitive development activity, are the costs of

(a) personnel employed exclusively in the industrial research or the pre-competitive development activity;

(b) instruments, equipment, land or buildings used exclusively and permanently, except when disposed of on a commercial basis, for the industrial research or the pre-competitive development activity;

(c) consultant services, the acquisition of intellectual property rights and the development of intellectual property used exclusively for the industrial research or the pre-competitive development activity;

(d) additional overhead incurred directly as a result of the industrial research or the pre-competitive development activity; and

(e) materials and supplies used directly in the industrial research or the pre-competitive development activity.

(3) For the purposes of subparagraph (1)(c)(i), a region is an eligible disadvantaged region if

(a) the region is a clearly designated, contiguous geographical area within the territory of the granting authority, with an identifiable regional economy and administration;

(b) the region is considered disadvantaged on the basis of objective economic criteria set out in a legislative, regulatory or administrative instrument or other public document, including at least one of the following:

(i) a per capita income, per capita household income or per capita gross domestic product that is less than 85 per cent of the average for the territory concerned, as measured over a three year period, and

(ii) an unemployment rate that is at least 110 per cent of the average unemployment rate for the territory concerned, as measured over a three year period; and

(c) the region's disadvantaged situation is not the result of temporary economic conditions.

PART II

AMOUNT OF SUBSIDY

General

26. There shall be deducted from the amount of subsidy in relation to any subsidized goods

(a) the amount of any fee or other expense necessarily incurred by the recipient of the subsidy in obtaining the subsidy;

(b) the amount of any tax, duty or other charge levied by a government against the recipient of the benefit of the subsidy for the purpose of offsetting the subsidy; and

(c) the amount of any loss in the value of the subsidy that results from the deferred receipt of the subsidy where the deferral has been imposed by the government that granted the subsidy.

Grant

27. Where the subsidy in relation to any subsidized goods is in the form of a grant, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, the amount of the grant over

(a) where the grant was, or is, to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the estimated total quantity of subsidized goods to which the grant is attributable;

(b) where the grant was, or is, to be used for the purchase or construction of a fixed asset, the estimated total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used for the anticipated useful life of the fixed asset;

(c) where the use of the grant was, or is, not for the purposes described in paragraph (a) or (b) or is unknown, the estimated total quantity of subsidized goods the production, purchase, distribution, transportation, sale, export or import of which was, or will be, carried out by the person who received the grant during the weighted average useful life, not exceeding ten years, of fixed assets used by the industry of that person.

27.1 (1) Any amount that relates to the direct transfer of funds or liabilities by the practices of a government shall be treated as a grant under section 27.

(2) Any amount otherwise owing and due to a government that is exempted or deducted and any amount owing and due to a government that is forgiven or not collected by the government shall be treated as a grant under section 27.

Loan at a Preferential Rate

28. Where the subsidy in relation to any subsidized goods is in the form of a preferential loan, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, over the quantity of goods determined in accordance with section 31, the present value of the sum of

(a) the amount determined in accordance with section 29, and

(b)any costs, other than interest, that would have been incurred by the recipient of the preferential loan with respect to a non-guaranteed commercial loan that the recipient could have obtained,

such present value being determined as of the date the loan funds were advanced and by reference to the discount rate referred to in section 30.

29. (1) The amount referred to in paragraph 28(a) is the difference between

(a)the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency in which the payments for the preferential loan are expressed and on the same credit terms, other than the interest rate, as are applicable to the preferential loan, and

(b)the amount of interest payable on the preferential loan.

(2) For the purposes of paragraph (1)(a), the interest rate is

(a)the prevailing interest rate in the territory of the government that made the preferential loan, at the date the preferential loan was made, in respect of non-guaranteed commercial loans that the recipient of the preferential loan could have obtained, in the same currency in which the payments for the preferential loan are expressed and on credit terms, other than the interest rate, that are the same or substantially the same as the credit terms of the preferential loan;

(b)where the interest rate described in paragraph (a) cannot be ascertained or where there is no such interest rate, the prevailing interest rate in the territory of the government that provided the preferential loan, at the date the preferential loan was provided, in respect of non-guaranteed commercial loans that the recipient of the preferential loan could have obtained, in the same currency in which the payments for the preferential loan are expressed

and on credit terms, other than the interest rate, that most closely approximate the credit terms of the preferential loan; or

(c) where the interest rates described in paragraphs (a) and (b) cannot be ascertained or where there are no such interest rates, the prevailing interest rate in the territory of the government that provided the preferential loan, at the date the preferential loan was made, in respect of non-guaranteed commercial loans that

(i) producers of like goods, whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the preferential loan, could have obtained,

(ii) where subparagraph (i) is not applicable, producers of goods of the same general category, whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the preferential loan, could have obtained, or

(iii) where subparagraphs (i) and (ii) are not applicable, producers of goods of the group or range of goods that is next largest to the category referred to in subparagraph (ii), whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the preferential loan, could have obtained,

in the same currency in which the payments for the preferential loan are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms of the preferential loan.

30. The discount rate for the purposes of section 28 is the same as the interest rate determined in accordance with subsection 29(2).

31. The quantity of goods, for the purpose of section 28, is

(a) where the preferential loan was, or is, to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or

import of subsidized goods, the estimated total quantity of subsidized goods to which the preferential loan is attributable;

(b)where the preferential loan was, or is, to be used for the purchase or construction of a fixed asset, the estimated total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used for the anticipated useful life of the fixed asset;

(c)where the use of the preferential loan was not or is not for the purposes described in paragraph (a) or (b) or is unknown, the estimated total quantity of subsidized goods the production, purchase, distribution, transportation, sale, export or import of which was or will be carried out by the person who received the preferential loan during the weighted average useful life of fixed assets, not exceeding 10 years, used by the industry in which that person is engaged.

Loan Guarantees

31.1 (1) Where the subsidy in relation to any subsidized goods is in the form of a loan guarantee, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, over the quantity of goods determined in accordance with subsection (2), the present value of the difference between

(a)the amount of interest and any administrative fees the person on whose behalf the guarantee is provided would have had to pay in respect of the loan had it not been for the guarantee, and

(b)the amount of interest and any administrative fees the person on whose behalf the guarantee is provided will actually pay in respect of the loan secured by the guarantee,

such present value being determined as of the date the loan funds were advanced and by reference to the discount rate determined in accordance with subsection (3).

(2) For the purposes of subsection (1), the quantity of goods is

(a) where the loan secured by the guarantee was, or is, to be used for operating expenses in the production, purchase, distribution, transportation, sale, export or import of subsidized goods, the estimated total quantity of subsidized goods to which the loan is attributable;

(b) where the loan secured by the guarantee was, or is, to be used for the purchase or construction of a fixed asset, the estimated total quantity of subsidized goods for the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used during the anticipated useful life of the fixed asset;

(c) where the use of the loan secured by the guarantee was not or is not a use set out in paragraph (a) or (b) or is unknown, the estimated total quantity of subsidized goods the production, purchase, distribution, transportation, sale, export or import of which was or will be carried out by the person who received the loan during the weighted average useful life of fixed assets, not exceeding 10 years, used by the industry in which that person is engaged.

(3) For the purposes of subsection (1), the discount rate is

(a) the prevailing interest rate in the territory of the government that provided the loan guarantee, at the date the loan was made, in respect of commercial loans that the recipient of the loan could have obtained, in the same currency in which the payments for the loan are expressed and on credit terms, other than the interest rate, that are the same or substantially the same as the credit terms of the loan;

(b) where the interest rate described in paragraph (a) cannot be ascertained or where there is no such interest rate, the prevailing interest rate in the

territory of the government that provided the loan guarantee, at the date the loan was made, in respect of commercial loans that the recipient of the loan could have obtained, in the same currency in which the payments for the loan are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms of the loan; or

(c) where the interest rates described in paragraphs (a) and (b) cannot be ascertained or where there are no such interest rates, the prevailing interest rate in the territory of the government that provided the loan guarantee, at the date the loan was made, in respect of commercial loans that

(i) producers of like goods, whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the loan, could have obtained,

(ii) where subparagraph (i) is not applicable, producers of goods of the same general category, whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the loan, could have obtained, or

(iii) where subparagraphs (i) and (ii) are not applicable, producers of goods of the group or range of goods that is next largest to the category referred to in subparagraph (ii), whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the loan, could have obtained,

in the same currency in which the payments for the loan are expressed and on credit terms, other than the interest rate, that most closely approximate the credit terms of the loan.

Income Tax Credits, Refunds and Exemptions

32. Where the subsidy in relation to any subsidized goods is contingent on the export of those goods and in the form of a credit against, a refund of or

an exemption from income taxes levied during any period, the amount of subsidy shall be determined by dividing

(a) the amount of the credit, refund or tax not paid by reason of the exemption, as the case may be, by

(b) the quantity of goods exported during the period.

Deferral of Income Taxes

33. Where the subsidy in relation to any subsidized goods is contingent on the export of those goods and in the form of a deferral of income taxes, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, the amount determined in accordance with section 34 over the quantity of goods exported during the period for which taxes would have been paid had the taxes not been deferred.

34. (1) The amount for the purpose of section 33 is the present value of the interest that would have been payable, by the recipient of the deferral of income taxes, on a commercial loan in an amount equal to the amount of the deferred taxes, for a period equal to the period of the deferral, and with repayment terms similar to those in the payment schedule that applies to the deferred taxes, such present value being determined as of the date the deferral of income taxes came into effect in respect of the recipient of the deferral and by reference to the discount rate determined in accordance with subsection (2), and the interest rate in respect of such a loan being equal to the rate that is

(a) the prevailing interest rate in the territory of the government that permitted the deferral of income taxes, at the date the taxes would have been payable had they not been deferred, in respect of commercial loans that the recipient of the deferral could have obtained and that have a period the same or substantially the same as the period of the deferral and

repayment terms comparable to those in the payment schedule applicable to the deferred taxes;

(b)where the interest rate described in paragraph (a) cannot be ascertained or where there is no such interest rate, the prevailing interest rate in the territory of the government that permitted the deferral, at the date the taxes would have been payable had they not been deferred, in respect of commercial loans that the recipient of the deferral could have obtained and that have a period that most closely approximates that of the period of the deferral and repayment terms that most closely approximate those in the payment schedule applicable to the deferred taxes; or

(c)where the interest rates described in paragraphs (a) and (b) cannot be ascertained or where there are no such interest rates, the prevailing interest rate in the territory of the government that permitted the deferral, at the date the taxes would have been payable had they not been deferred, in respect of commercial loans that

(i)producers of like goods, whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the deferral, could have obtained,

(ii)where subparagraph (i) is not applicable, producers of goods of the same general category, whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the deferral, could have obtained, or

(iii)where subparagraphs (i) and (ii) are not applicable, producers of goods of the group or range of goods that is next largest to the category referred to in subparagraph (ii), whose financial creditworthiness is the same or substantially the same as or, in the absence of that condition, approximates that of the recipient of the deferral, could have obtained,

and that have a period that most closely approximates that of the period of the deferral and repayment terms that most closely approximate those in the payment schedule applicable to the deferred taxes.

(2) The discount rate for the purposes of subsection (1) is the same as the interest rate determined in accordance with that subsection.

Excessive Exemption, Refund, Rebate or Remission of Taxes

35. Where the subsidy in relation to any subsidized goods is contingent on the export of goods and is in the form of an exemption, refund, rebate or remission of taxes levied on the production, purchase, distribution, transportation, sale, export or import of goods, the amount of subsidy shall be determined by deducting the amount of tax levied on or in respect of the exported goods or the amount of tax that would have been levied on or in respect of the goods if they had not been exported, from the amount of the exemption, refund, rebate or remission that was granted in connection with the goods, and dividing the result by the quantity of goods, in relation to which the exemption, refund, rebate or remission was granted, that were exported during the period for which the taxes were exempted, refunded, rebated or remitted.

Excessive Drawbacks on Inputs

35.01 (1) Where the subsidy in relation to any subsidized goods is contingent on the export of the goods and is in the form of a remission or drawback of duties or taxes on imported goods consumed in the production of those goods, the amount of subsidy shall be determined by deducting the amount of duties or taxes levied on the imported goods that were consumed in the production of the exported goods from the amount of the remission or drawback granted in connection with the imported goods, and dividing the result by the quantity of exported goods, in relation to which the remission or drawback was granted, exported during the period for which the duties or taxes were remitted or drawn back.

(2) For the purpose of subsection (1), imported goods are considered to be consumed in the production of the exported goods only if the imported goods are

(a) inputs that are physically incorporated into the exported goods;

(b) energy, fuel and oil used in the production of the exported goods; or

(c) catalysts that are expended in the production of the exported goods.

Acquisition of Shares

35.1 Where the subsidy in relation to any subsidized goods is in the form of the acquisition of shares, by a government, in a corporate enterprise, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, over the estimated total quantity of subsidized goods to which the subsidy is attributable, the difference between

(a) the amount the government paid or agreed to pay for the shares, and

(b) the fair market value of those shares immediately before the government's decision to acquire the shares became public.

Purchase of Goods

35.2 Where the subsidy in relation to any subsidized goods is in the form of the purchase, by a government, of goods, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, over the estimated total quantity of subsidized goods to which the subsidy is attributable, the difference between

(a) the amount the government paid or agreed to pay for the goods, and

(b) the fair market value of the goods in the territory of that government.

Goods or Services Provided by a Government

36. Where the subsidy in relation to any subsidized goods is in the form of the provision, by a government, of goods or services, the amount of subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, over the estimated total quantity of subsidized goods to which the subsidy is attributable, the difference between

(a) the fair market value of the goods or services in the territory of the government providing the subsidy, and

(b) the price at which the goods or services were provided by that government.

36.001 Where there is a significant difference between the amount of subsidy in relation to goods as otherwise determined under this Part and the future value, on the date of sale of the goods, of the amount of subsidy so determined, the amount of subsidy shall be the future value, on the date of sale, of the amount of subsidy as otherwise determined under this Part.

PART II.01

DISPUTE SETTLEMENT RESPECTING GOODS OF A NAFTA COUNTRY

36.01 In this Part,

"American Secretary" means the person designated to serve as Secretary to the American Section of the Secretariat; (secrétaire américain)

"Mexican Secretary" means the person designated to serve as Secretary to the Mexican Section of the Secretariat; (secrétaire mexicain)

"Secretariat" means the Secretariat established pursuant to paragraph 1 of Article 2002 of the North American Free Trade Agreement. (Secrétariat)

36.02 For the purposes of the definition "government of a NAFTA country" in subsection 2(1) of the Act, the following are prescribed departments, agencies or other bodies:

(a) for the purposes of subsection 77.011(1), subsection 77.011(6) of the English version, subsections 77.015(5), 77.017(1) and (3) and 77.019(6) of the Act,

(i) in respect of Mexico, the office of the Mexican Secretary, and

(ii) in respect of the United States, the office of the American Secretary;

(b) for the purposes of subsections 77.011(4) and 77.013(3) of the Act,

(i) in respect of Mexico, the Secretaría de Comercio y Fomento Industrial (Secretariat of Trade and Industrial Development), and

(ii) in respect of the United States, the Department of State; and

(c) for the purposes of subsection 77.023(1), section 77.025 and subsections 77.028(1) and 77.031(1) and (2) of the Act,

(i) in respect of Mexico, the Secretaría de Comercio y Fomento Industrial (Secretariat of Trade and Industrial Development), and

(ii) in respect of the United States, the office of the United States Trade Representative.

36.03 A government of a province of Canada or of a state of the United States that is aggrieved by a definitive decision is deemed to be a person who is entitled to file a request with the Canadian Secretary under subsection 77.011(2) of the Act.

36.04 For the purposes of subsection 77.012(1) of the Act, notice of an intention to make an application or to appeal in respect of a definitive decision that is to be given to every person who, but for section 77.012 of the Act, would be entitled to make such an application or to appeal shall be given by publication in the Canada Gazette of a notice to that effect and, if that person is a person referred to in subrule 33(1)(a) of the NAFTA Article 1904 Panel Rules, by serving that person with a written notice in the manner set out in rule 25 of those Rules.

36.05 (1) In this section "administrative record" has the same meaning as in Article 1911 of the North American Free Trade Agreement.

(2) For the purposes of section 77.015 of the Act, a panel has the powers, rights and privileges of a superior court of record in respect of the compelling of production, and the examination, of the administrative record in respect of a definitive decision, other than any portion thereof that is government information within the meaning of the rules relating to panel reviews.

36.06 For the purposes of section 77.019 of the Act, a committee has the powers, rights and privileges of a superior court of record in respect of

(a) the compelling of production and the examination of the record of a panel review; and

(b) where the grounds for an extraordinary challenge proceeding before the committee are the grounds set out in subparagraph 13(a)(i) or paragraph 13(b) of Article 1904 of the North American Free Trade Agreement,

(i) the compelling of production and the examination of documents relevant to those grounds,

(ii) the summoning and enforcement of attendance of witnesses and the compelling of those witnesses to give oral or written evidence on oath or on solemn affirmation, and

(iii) the administering of oaths and affirmations.

36.07 For the purposes of subsection 77.021(2) of the Act, the following are prescribed persons:

(a) a member of a committee;

(b) the staff of, or any person under contract to, a panel, committee or special committee;

(c) the Canadian Secretary and the staff of, or any person under contract to, the Canadian Section of the Secretariat;

(d) the Mexican Secretary and the staff of, or any person under contract to, the Mexican Section of the Secretariat;

(e) the American Secretary and the staff of, or any person under contract to, the American Section of the Secretariat;

(f) counsel for participants in the proceedings of a panel, committee or special committee and employees of, and any professional adviser retained by, or under the control or direction of, those counsel to whom confidential, personal, business proprietary or other privileged or prescribed information may be made available in respect of those proceedings; and

(g) any other person to whom confidential, personal, business proprietary or other privileged or prescribed information is made available in respect of proceedings under Part I.1 of the Act.

PART II.1

DISPUTE SETTLEMENT RESPECTING GOODS OF THE UNITED STATES

36.1 For the purposes of subsections 77.11(1), (5) and (6), 77.15(5), 77.17(1) and (3) and 77.19(5) of the Act, the American Secretary is the prescribed agency of the United States government.

36.2 A government of a province of Canada or of a state of the United States that is aggrieved by a definitive decision shall be deemed to be a person entitled to make a request to the Canadian Secretary under subsection 77.11(2) of the Act.

36.3 For the purposes of subsections 77.11(3) and 77.13(2) of the Act, the Department of State of the United States is the prescribed department of the United States government.

36.4 (1) For the purposes of subsection 77.12(1) of the Act, the manner in which notice of the intention to make an application or appeal is given to every person to whom notice of the definitive decision was sent by the Deputy Minister or every person that appeared in the proceedings before the Tribunal, as the case may be, shall be in writing.

36.5 For the purposes of subsection 77.15(2) of the Act, a panel shall have the powers, rights and privileges of a superior court of record to compel the production of and to examine the administrative record of proceedings in respect of the definitive decision, other than government information, as that expression is defined by the rules, for the purpose of the full review of the definitive decision.

36.6 For the purposes of subsection 77.19(2) of the Act, a committee shall have the following powers, rights and privileges of a superior court of record:

(a)the power to compel the production of and to examine the record of the panel review, for the purpose of the full review of the decision of the panel; and

(b)where the grounds of the extraordinary challenge are the grounds set out in subparagraph 13(a)(i) and paragraph 13(b) of Article 1904 of the Free Trade Agreement,

(i)the power to compel the production of and to examine documents relevant to those grounds,

(ii)the power to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath or on solemn affirmation, and

(iii)the power to administer oaths and affirmations.

36.7 For the purposes of subsection 77.21(2) of the Act, the following are prescribed persons:

(a)each member of the staff of a panel or committee;

(b)the Canadian Secretary, the American Secretary and the staff of the Secretariat and of the American Secretariat;

(c)counsel for participants in the proceedings of the panel or committee and employees of those counsel to whom confidential, personal, business proprietary or privileged information may be made available in respect of those proceedings; and

(d)any other person to whom confidential, personal, business proprietary or privileged information is made available in respect of proceedings under Part II of the Act.

PART III

GENERAL

Properly Documented Complaints

37. For the purposes of subparagraph (b)(ii) of the definition "properly documented" in subsection 2(1) of the Act, the following information is prescribed:

- (a) the volume and value of the complainant's domestic production of like goods;
- (b) a list of all producers of like goods in Canada, and of associations of such producers in Canada, whom the complainant knows of;
- (c) such details as are reasonably available to the complainant regarding the estimated volume and value of the production of like goods by the producers referred to in paragraph (b);
- (d) the name of each foreign producer or exporter of the allegedly dumped or subsidized goods whom the complainant knows of;
- (e) the name of each importer in Canada of the allegedly dumped or subsidized goods whom the complainant knows of;
- (f) such details as are reasonably available to the complainant regarding the evolution of the volume of imports of the allegedly dumped or subsidized goods; and
- (g) such details as are reasonably available to the complainant regarding the effect of imports of the allegedly dumped or subsidized goods on the price of like goods in Canada.

Injury, Retardation or Threat of Injury

37.1 (1) For the purposes of determining whether the dumping or subsidizing of any goods has caused injury or retardation, the following factors are prescribed:

(a) the volume of the dumped or subsidized goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods;

(b) the effect of the dumped or subsidized goods on the price of like goods and, in particular, whether the dumped or subsidized goods have significantly

(i) undercut the price of like goods,

(ii) depressed the price of like goods, or

(iii) suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred;

(c) the resulting impact of the dumped or subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry, including

(i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity,

(ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital,

(ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and

(iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of

the legislature of a province, that are subsidized, any increased burden on a government support programme; and

(d) any other factors that are relevant in the circumstances.

(2) For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed:

(a) the nature of the subsidy in question and the effects it is likely to have on trade;

(b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods;

(c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase;

(d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;

(e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods;

(f) inventories of the goods;

(g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;

(g.1)the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; and

(h) any other factors that are relevant in the circumstances.

(3) For the purposes of determining whether the dumping or subsidizing of any goods has caused injury or retardation or is threatening to cause injury, the following additional factors are prescribed:

(a)whether a causal relationship exists between the dumping or subsidizing of any goods and injury, retardation or threat of injury, on the basis of

(i)the volumes and prices of imports of like goods that are not dumped or subsidized,

(ii)a contraction in demand for the goods or like goods;

(iii)changes in patterns of consumption of the goods or like goods,

(iv)trade-restrictive practices of, and competition between, foreign and domestic producers,

(v)developments in technology,

(vi)the export performance and productivity of the domestic industry in respect of like goods, and

(vii)any other factors that are relevant in the circumstances; and

(b)whether any factors other than the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.

Joining Investigations

38. Subject to section 39, where more than one dumping investigation or subsidy investigation, or one or more dumping investigations and one or more subsidy investigations, deal with the same goods, like goods or similar goods, the investigations may be joined and carried out as one investigation.

39. An investigation may not be joined pursuant to section 38 if a preliminary determination has been made in respect thereof.

40. Where investigations are joined pursuant to section 38, the Deputy Minister shall cause a notice of the joining to be given in writing to the importers, exporters, governments of the countries of export and complainants, if any, involved in the investigations.

Person Interested

41. For the purpose of subsection 45(2) of the Act, the expression "person interested" means any person who is

(a) engaged in the production, purchase, sale, export or import of any goods that are the subject of an investigation,

(b) engaged in the production, purchase or sale of any goods produced in Canada that are like goods in relation to any goods that are the subject of an investigation,

(c) acting on behalf of any person referred to in paragraph (a) or (b),

(d) required or authorized by any Act of Parliament or of the legislature of a province to make representations to the Tribunal on the question described in subsection 45(2) of the Act, or

(e) a user of any goods that are like goods in relation to any goods that are the subject of an investigation,

and includes any association whose purpose is to advocate the interests of consumers in Canada.

42. For the purposes of subsection 89(1) and section 95 of the Act, a person referred to in paragraphs 41(a) to (c) of these Regulations is a person interested in the question as to which of two or more persons is the importer in Canada where that question arises under the Act.

Fee Payable

43. The fees that are payable under section 83 of the Act for the copying of the information shall be as follows:

(a) for photocopying a page with the dimensions of not more than 21.5 cm by 35.5 cm, \$0.20 per page;

(b) for microfiche duplication, non-silver, \$0.40 per fiche;

(c) for 16 mm microfilm duplication, non-silver, \$12 per 30.5 mm roll;

(d) for 35 mm microfilm duplication, non-silver, \$14 per 30.5 mm roll;

(e) for microform-to-paper duplication, \$0.25 per page;

(f) for magnetic tape-to-tape duplication, \$25 per 731.5 mm reel; and

(g) for magnetic diskette duplication,

(i) \$5 per diskette 88.9 mm in diameter,

(ii) \$6 per diskette 133.3 mm in diameter, and

(iii) \$10 per diskette 203.3 mm in diameter.

Currency Conversion

44. (1) Subject to subsection (2) and section 45, where an amount that is used or taken into account for any purpose in the administration or enforcement of the Act is expressed in the currency of a country other than Canada, the equivalent dollar value of that amount shall be calculated by multiplying that other currency amount by the prevailing rate of exchange referred to in section 5 of the Currency Exchange for Customs Valuation Regulations in respect of that currency for the date of sale.

(2) Where a sale of foreign currency on forward markets is directly linked to the export sale to an importer in Canada, the rate of exchange that was used in the forward sale of currency shall be used in place of the rate of exchange referred to in subsection (1).

45. Where sufficient information has not been furnished or is not available at the time goods have been released from customs possession or entered for warehouse, whichever is the earlier, to enable the calculation under section 44 to be made on the basis of the date of sale, the date of shipment to Canada shall be used in place of the date of sale for the purpose of that section.

Re-determinations

46. Where a manufacturer, producer or exporter of goods of the United States files a request for re-determination, the manufacturer, producer or exporter is hereby prescribed for the purposes of subsection 59(4) of the Act.

47. For the purposes of subsections 56(1.1) and 58(2) of the Act, a request for re-determination shall be delivered by hand or sent by registered mail to the Director General, Anti-dumping and Countervailing Directorate, Trade Administration Branch, Revenue Canada, Ottawa, Ontario K1A 0L5.

48. For the purposes of subsections 56(1.1) and 58(2) of the Act, the information to accompany a request for a re-determination shall be

(a) a statement setting out the grounds on which the determination or re-determination is contested;

(b) a statement setting out the facts on which the request for re-determination is based;

(c) evidence in support of the facts referred to in paragraph (b); and

(d) where the request for re-determination is made by the importer of the goods, a copy of

(i) the documentation used in accounting for the goods under subsection 32(1), (3) or (5) of the Customs Act, and

(ii) where the goods were released prior to accounting, the documentation used in making an interim accounting for the goods under subsection 32(2) of the Customs Act, if different from the documentation referred to in subparagraph (i).

49. For the purposes of subsections 56(1.1), 58(2) and 59(4) and (5) of the Act, the Department of State of the United States is the prescribed department of the United States Government.

50. For the purposes of subsection 59(3.1) of the Act, a manufacturer, producer or exporter of goods of a NAFTA country who files a request for a re-determination is a prescribed person.

51. For the purposes of subsections 56(1.01) and 58(1.1) of the Act, a request for a re-determination shall be delivered by hand or sent by registered mail to the Director General, Anti-dumping and Countervailing Directorate, Trade Administration Branch, Revenue Canada, Ottawa, Ontario K1A 0L5.

52. For the purposes of subsections 56(1.01) and 58(1.1) of the Act, a request for a re-determination shall be accompanied by

(a) statement setting out the grounds on which the determination or re-determination is contested;

(b) statement setting out the facts on which the request for re-determination is based;

(c) vidence in support of the facts referred to in paragraph (b); and

(d) where the request for the re-determination is made by the importer of the goods, a copy of

(i) the documentation used in accounting for the goods under subsection 32(1), (3) or (5) of the Customs Act, and

(ii) where the goods were released prior to accounting, the documentation used in making an interim accounting for the goods under subsection 32(2) of the Customs Act, if that documentation is different from the documentation referred to in subparagraph (i).

53. For the purposes of the definition "government of a NAFTA country" in subsection 2(1) of the Act, the following are prescribed departments for the purposes of subsections 56(1.01), 58(1.1) and 59(3.1) of the Act:

(a) in respect of the United States, the Department of State; and

(b) in respect of Mexico, the Secretaría de Comercio y Fomento Industrial (Secretariat of Trade and Industrial Development).

54. For the purposes of the Act,

(a) the Federal Register is deemed to be the official publication of the United States; and

(b)the Diario Oficial de la Federación is deemed to be the official publication of Mexico.

55. (1) For the purposes of subsection 13.2(2) of the Act, a request for a review shall be made in writing and shall contain the following information:

(a) confirmation that the goods have been sold or consigned to an importer in Canada;

(b) with respect to each sale or consignment of the goods to an importer in Canada,

(i) the name and address of the importer,

(ii) a detailed description of the goods,

(iii) the date of sale or consignment of the goods,

(iv) the date of shipment of the goods,

(v) the purchase or consignment order number with respect to the goods and the date of the purchase or consignment order,

(vi) complete details of the

(A) contract of sale or of the purchase order acknowledgement or acceptance, or

(B) consignment contract or of the consignment order acknowledgement or acceptance, and

(vii) the name and address of the manufacturer or producer of the goods; and

(c) a description of the exporting enterprise and a list of all associated persons who are located in the country of export.

(2) A request for a review shall be delivered to the Director General, Anti-dumping and Countervailing Directorate, Trade Administration Branch, Revenue Canada, Ottawa, Ontario K1A 0L5.

56. The security referred to in subsection 13.2(4) of the Act shall be posted

(a) if it is in the form of cash or a certified cheque, with an officer at the customs office at which the goods are or are to be released; and

(b) if it is in any other form, with an officer at the regional office of Revenue Canada of the region in which the goods are or are to be released.

Refusal of Acceptance of Undertaking

57. For the purpose of subsection 49(4) of the Act, the period of time commences on the day on which the preliminary determination of dumping or subsidizing is made in respect of the goods to which the undertaking has been offered and ends 60 days after that day.

Number of Copies of Written Submissions

58. A person who is making a written submission for the purposes of the Act shall submit the number of copies specified by an officer.

Extract
Canada Gazette, Part II
28 August 1991

CANADIAN INTERNATIONAL TRADE TRIBUNAL RULES

Rules Governing the Proceedings, Practice and Procedures of the
Canadian International Trade Tribunal

Minister of Supply and Services Canada 1991
QUEEN'S PRINTER FOR CANADA, OTTAWA, 1991

Registration

SOR/91-499 14 August 1991

CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

Canadian International Trade Tribunal Rules

P.C. 1991-1446 13 August 1991

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to Subsection 39(1)* of the Canadian International Trade Tribunal Act** is pleased hereby to approve:

(a)the revocation by the Canadian International Trade Tribunal of the Canadian Import Tribunal Rules, approved by Order in Council P.C. 1985-3312 of 7 November 1985*** and

(b)the making by the Canadian International Trade Tribunal, after consultation with the Minister of Finance, of the annexed Rules governing the proceedings, practice and procedures of the Canadian International Trade Tribunal, in substitution therefor.

RULES GOVERNING THE PROCEEDINGS, PRACTICE AND
PROCEDURES
OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

Short Title

1. These Rules may be cited as the Canadian International Trade Tribunal Rules.

Definitions

2. In these Rules,

"Act" means the Canadian International Trade Tribunal Act; (Loi)

"appeal" means an appeal referred to in paragraph 30(a); (appel)

"appellant" means a person who files a notice of appeal pursuant to Rule 31; (appelant)

"counsel" includes any person who acts in a proceeding on behalf of a party; (avocat)

"counsel of record" means the counsel of record for a party as determined in accordance with Rule 11; (avocat inscrit au dossier)

"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise (sous-ministre)

"fax" means to transmit a facsimile of printed matter electronically, or a document so transmitted; (télécopie)

*S.C. 1988 C. 65, S. 59(E)

**R.S. c. 47 (4th Supp.)

***SOR/85-1068. 1985 Canada Gazette Part II, p. 4652

"Form" means a Form set out in the schedule; (formule)

"interested party" means in relation to an inquiry made pursuant to Section 42 of the Special Import Measures Act after the receipt by the Secretary of a notice of a preliminary determination of dumping or subsidizing in respect of goods or in relation to a review pursuant to Section 76 of that Act:

(a)the complainant under Section 31 of that Act, if any, in the investigation in which the preliminary determination was made;

(b)any domestic producer, exporter to Canada or importer into Canada of goods in respect of which the preliminary determination was made;

(c)an association of or that includes, domestic producers, exporters to Canada or importers into Canada of goods in respect of which the preliminary determination was made;

(d)the government of any country mentioned in the preliminary determination; and

(e)any other person who, because that person's rights or pecuniary interests may be affected or for any other reason, is entitled to be heard by the Tribunal before the Tribunal disposes of the inquiry or the review, as the case may be, in accordance with that Act; (*partie intéressée*)

"intervener" means a person who:

(a)files a Notice of Appearance referred to in Rule 39 or a Notice of Intervention referred to in Rule 40; or

(b)is permitted to intervene pursuant to an order of the Tribunal referred to in Rule 42; (*intervenant*)

"party" means:

(a)in the case of an inquiry pursuant to Section 42, or a review pursuant to Section 76, of the Special Import Measures Act, any interested party who

has filed a Notice of Appearance in the inquiry or review in accordance with these Rules;

(b) in the case of a proceeding under Section 89 or paragraph 91(1)(g) of the Special Import Measures Act, a person to whom notice has been given pursuant to Subrule 76(2) or Rule 79 if:

(i) the person has filed a Notice of Appearance in accordance with these Rules, or

(ii) where no hearing is to be held in the proceeding, has made a written submission to the Tribunal, and

(c) in the case of an appeal, the appellant, the respondent or an intervener; and

(d) in the case of any other proceeding, any person who has an interest in the subject-matter of the proceeding and who has:

(i) filed a Notice of Appearance in that proceeding in accordance with these Rules, or

(ii) been given status by the Tribunal to be a party in the proceeding; (partie)

"proceeding" includes an appeal, re-hearing, reference, inquiry, recommencement of inquiry, review, request for a ruling, reconsideration of an order or finding, complaint filed by a domestic producer or any other proceeding before the Tribunal under the Act or under any other Act of Parliament or regulations made thereunder; (procédure)

"respondent" means the Minister of National Revenue or the Deputy Minister, as the case may be; (intimé)

"Secretary" means the Secretary of the Tribunal and includes any other officer or employee of the Tribunal during any period that the officer or employee is authorized to act as Secretary; (secrétaire).

Interpretation

3. These Rules shall be liberally construed to secure the fairest, least expensive and most expeditious determination of every proceeding, in accordance with Section 35 of the Act.

PART I

RULES OF GENERAL APPLICATION

Application

4. Except where the context otherwise requires, this Part applies to all proceedings before the Tribunal.

Direction on Procedure

5. Where, in any proceeding, a question of procedure arises to which these Rules do not provide an answer, or the answer they do provide is incomplete, the question shall be disposed of, consistently with such, if any, of these Rules as are applicable, in such manner as the tribunal directs.

Dispensing with or Varying Procedure

6. For the purpose of any proceeding the Tribunal may, in order to avoid an injustice to any party to the proceeding or if the parties to the proceeding consent, dispense with, vary or supplement any of these Rules.

Defect in Form and Irregularity

7. No proceeding is invalid by reason of a defect in form or a technical irregularity.

Extending or Abridging Time-Limits

8. The Tribunal may extend or abridge the time-limits fixed by these Rules or otherwise fixed by the Tribunal either before or after the expiration of the time-limits fixed.

Computation of Time

9. Unless otherwise provided, the computation of time under these Rules or a direction of the Tribunal is governed by Sections 26 to 28 of the Interpretation Act.

Appearances

10. (1) Where a notice published in the Canada Gazette pursuant to Rule 54, 65, 71, 76, 78 or 85 with respect to a proceeding specifies the time and place fixed for a hearing in the proceeding, any person who proposes to appear at the hearing shall file with the Tribunal a Notice of Appearance in Form I, containing the information indicated in that Form, on or before the date specified in the notice published in the Canada Gazette as the date on or before which any party in the proceeding must file a Notice of Appearance.

(2) Where a person referred to in subrule (1) states in a Notice of Appearance in Form I the name of counsel by whom the person will be represented, the counsel so named shall file with the Tribunal a Notice of Appearance in Form II on or before the date specified in the notice published in the Canada Gazette as the date on or before which counsel for a party must file that Notice of Appearance.

Counsel of Record

11. (1) A counsel who signs a document filed pursuant to these Rules on behalf of any party shall be the counsel of record for the party commencing on the date of filing and continuing until a change, if any, is made in accordance with subrule (2).

(2) A party in a proceeding may change the party's counsel of record by:

(a) filing with the Tribunal a Notice of Change of counsel of record signed by the new counsel;

(b) serving a copy of the Notice on the former counsel and every other party in the proceeding; and

(c) filing with the Tribunal proof of service of the Notice.

Filing of Documents

12. (1) Subject to Rule 17 and in addition to the provisions of the Excise Tax Act in respect of appeals under Part VII of that Act, each document required or permitted by these Rules to be filed shall be filed by sending by mail or by fax, or by hand delivery, to the Secretary:

(a) in the case of an appeal, the original and five copies of the document; and

(b) in the case of any other proceeding, the original and eight copies of the document.

(2) In addition to the number of copies mentioned in subrule (1), the parties shall file any additional number of copies that may be specified by the Secretary where the Tribunal is of the opinion that the special circumstances of a proceeding so require.

(3) A document that is filed by fax shall include a cover page setting out the following information:

- (a) the name, address and telephone number of the sender;
- (b) the date and time of the transmission;
- (c) the total number of pages transmitted, including the cover page; and
- (d) the name, address and telephone number of a person to contact if transmission problems occur.

(4) Notwithstanding subrules (1) and (2), where a document is filed by fax, only one copy of the document may be sent by fax if the original of the document and the required number of copies are sent forthwith to the Secretary by mail.

(5) Where the original of a document filed by fax is received, the Secretary shall substitute the original document for the fax.

(6) The date of filing of a document shall be considered to be:

(a) where the document is filed by mail, the earliest postal date appearing on the envelope containing the document;

(b) where the document is filed by fax, the date of transmission; and

(c) where the document is filed by hand delivery, the date stamped by the Secretary on receipt of the document.

(7) In the absence of any proof of the date of mailing or of transmission by fax of a document, the date shown by the date received stamp placed on the document by the Secretary shall be considered to be the date of filing of the document.

(8) Any document that is filed with the Tribunal may, with the consent of the Tribunal and on such terms and conditions, if any, as are fixed by the Tribunal, be amended at any time by the party by which it was filed.

Service of Documents

13. (1) Subject to Rule 17 and in addition to the provisions of the Excise Tax Act in respect of appeals under Part VII of that Act, the following rules apply to the service of documents:

(a) no document is required to be served personally, unless personal service of the document is required pursuant to these Rules or a direction of the Tribunal; and

(b) a document that is not required to be served personally may be served at the address for service of the party.

(2) Where a document is required to be served personally, the service shall be made:

(a) on an individual, by leaving a copy of the document with the individual;

(b) on a corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business; and

(c) in any other case, in such manner as the Tribunal may direct.

(3) The address for service of a party shall be:

(a) where there is a counsel of record for a party, the business address of the counsel as shown on the most recent document filed by the counsel that shows the counsel's address; and

(b) where there is no counsel of record:

(i) in the case of the Minister of National Revenue or the Deputy Minister, the Office of the Deputy Attorney General of Canada in Ottawa, or

(ii) in the case of any other party, the address of the party as shown on the most recent document filed by the party that shows the party's address.

(4) Service of a document at an address for service shall be made:

(a) by sending the document by registered mail or by fax to the address for service; or

(b) by leaving the document at the address for service.

(5) A document that is served by fax shall include a cover page setting out the following information:

(a) the name, address and telephone number of the sender;

(b) the name of the person to be served;

(c) the date and time of the transmission;

(d) the total number of pages transmitted, including the cover page; and

(e) the name, address and telephone number of a person to contact if transmission problems occur.

(6) In the absence of proof to the contrary, the date of service of a document shall be considered to be:

(a) where the document is served personally or by leaving it at the address for service, the date of delivery;

(b) where the document is served by registered mail, the date that is five days after the earliest postal date appearing on the envelope containing the document: and

(c) where the document is served by fax, the date of transmission.

(7) Where any document is required by these Rules or by direction of the Tribunal to be served by any party, proof of service shall be filed with the Tribunal forthwith after service of the document.

(8) Proof of service of any document shall be made by showing:

(a) an acknowledgment of service signed by or on behalf of the person served;

(b) an affidavit of service stating the name of the person who served the document and the date, place and manner of service; or

(c) in the case of service by registered mail, an affidavit by the person mailing the document, stating the date of mailing and to which is attached a receipt signed by the person served.

Filing of Confidential Information

14. Where information designated as confidential pursuant to paragraph 85(1)(a) of the Special Import Measures Act is filed with the Tribunal, the Tribunal shall treat that information as confidential unless the person who provided it agrees in writing that it need not be treated as confidential by the Tribunal.

Submission of Confidential Information

15. Where a person who provides information to the Tribunal for the purposes of any proceeding wishes some or all of the information to be kept confidential, the person shall file with the Tribunal, in addition to the

documents referred to in paragraphs 46(1)(a) and (b) of the Act, two separate sets of documents in the following manner:

(a) one set of documents containing the confidential information and marked "confidential" or "confidentiel" on the top of each page that contains confidential information; and

(b) one set of documents from which the confidential information has been deleted.

Disclosure of Confidential Information to Counsel

16. (1) A counsel for a party to a proceeding who wishes access to confidential information provided to the Tribunal for the purposes of the proceeding, other than a director, servant or employee of the party, shall file with the Tribunal a Declaration and Undertaking in Form III.

(2) After the filing by a counsel of a Declaration and Undertaking referred to in subrule (1), the Tribunal shall cause the counsel to be notified, in the manner that it considers appropriate in the circumstances, of its decision to grant access and, if access is not granted, it shall serve on the counsel a notification in writing setting out the reasons why access is not granted.

(3) Where the Tribunal decides not to give access to confidential information to a counsel, that counsel is not entitled to receive or to examine any confidential information provided to, or to be present when any confidential information is provided orally to, the Tribunal.

Filing, Service and Communication of Confidential Information

17. (1) A document containing confidential information shall be served only on the Tribunal.

(2) Where a counsel has been granted access to confidential information, the counsel shall not, unless authorized by the Tribunal:

(a) communicate the confidential information by fax, including for filing or serving that information; or

(b) communicate the confidential information by telephone.

Pre-hearing Conference

18. (1) At the same time as giving a notice of a hearing to be held in any proceeding or at any time after the giving of that notice, the Tribunal may direct that all parties to the proceeding or their counsels appear before the Tribunal or before a member thereof or the Secretary, at a time and place fixed by the Tribunal, for a pre-hearing conference for the purpose of making representations to the Tribunal or receiving guidance from the Tribunal with respect to any of the following matters that the Tribunal specifies:

(a) the clarification and simplification of issues;

(b) the procedure to be followed at the hearing;

(c) the mutual exchange between parties to the proceeding of written submissions, exhibits and other material presented or to be presented to the Tribunal;

(d) the question of whether any written submission, other document or testimony presented or proposed to be presented to the Tribunal contains confidential information;

(e) the question of the confidential information, if any, to which a person who is to appear on behalf of a party in the capacity of an expert on any matter should be given access; and

(f) any other matter with respect to which a discussion or decision before the hearing would, in the opinion of the Tribunal, aid in the expeditious

presentation of evidence or otherwise be conducive to the orderly conduct of the hearing.

(2) Counsel for any party to a proceeding may, if notice of a hearing has been given in the proceeding, make a written request to the Tribunal to direct that a pre-hearing conference be held to consider any matter referred in subrule (1).

(3) On receipt of a request pursuant to subrule (2), the Tribunal may direct that a pre-hearing conference be held as requested unless it determines that a pre-hearing conference on the matter would not assist in the orderly conduct of the hearing.

(4) Subject to paragraph 17(2)(b), where all parties to a pre-hearing conference consent or where the Tribunal so directs, the Tribunal may conduct the pre-hearing conference by telephone conference call or in any other manner that affords the parties or their counsel an opportunity to participate.

(5) Following a pre-hearing conference, the Tribunal may issue an order setting out its ruling with respect to the matters considered at the conference.

Availability of Information

19. (1) The Tribunal shall, prior to or at the commencement of a hearing in a proceeding, make available to each party or the party's counsel all of the information that has been provided to the Tribunal for the purposes of the proceeding and that has not been designated as confidential.

(2) The Tribunal shall, prior to or at the commencement of a hearing in a proceeding, make all confidential information that has been provided to the Tribunal for the purposes of the proceeding available to each counsel who has filed a Declaration and Undertaking and who has been granted access to the confidential information.

Subpoenas

20. (1) The Tribunal may, on its own initiative or at the request of any party, summon before it by subpoena any person to attend a hearing and require that person to give evidence on oath or affirmation and to produce documents or other things.

(2) A subpoena may be in Form IV and shall be issued by the Secretary without charge.

(3) A subpoena shall be served on the witness personally and, at the time of service, an amount that is not less than the amount to which the witness would have been entitled as fees and allowances if the subpoena had been issued pursuant to Rule 333 of the Federal Court Rules shall be paid or tendered to the witness.

(4) Where a subpoena issued pursuant to this rule is served on a person, the original copy of the subpoena shall be filed with the Tribunal forthwith after service, together with proof of service on the person.

Witnesses

21. (1) Subject to Section 34 of the Act and unless these Rules provide otherwise, witnesses at a hearing shall be examined orally on oath or affirmation and the examination may consist of direct examination, cross-examination and re-examination.

(2) A party who intends to call an expert witness at a hearing shall, not less than 10 days before the commencement of the hearing, file with the Secretary and serve on the other parties a report, signed by the expert witness, setting out the expert witness' name, address and qualifications and the substance of the expert witness' testimony.

(3) A party on whom a copy of a report described in subrule (2) has been served and who wishes to rebut with expert evidence any matter set out in the report shall, not less than five days before the commencement of the hearing, file with the Secretary a statement setting out the evidence to be introduced in rebuttal and serve a copy of the statement on the other parties.

Evidence

22. Where the Tribunal holds a hearing in any proceeding, the Tribunal may give whatever weight is appropriate to any written submission or other document filed in the proceeding as evidence, if the party who filed the document is not present at the hearing to testify with respect to, or does not make available to the Tribunal testimony with respect to, the matters set out in the document.

Hearings in Camera

23. Where, in any proceeding, the Tribunal directs a hearing or a portion thereof to be held in camera for the purpose of receiving confidential information, the hearing or portion thereof may be attended only by:

(a) the person who is to present confidential information to the Tribunal at the hearing;

(b) a person that a person referred to in paragraph (a) requests be permitted to attend the hearing;

(c) counsel for a party to the proceeding who has filed with the Tribunal a Declaration and Undertaking and who has been granted access to the confidential information;

(d) officers and employees of the Tribunal who have been directed to attend; and

(e) any other persons that the Tribunal authorizes to attend.

Notice of Motion

24. (1) Any matter that arises in the course of a proceeding and that requires a decision or order of the Tribunal shall be brought before the Tribunal by notice of motion.

(2) A notice of motion shall be in writing and may be in any form that contains a clear and concise statement of the facts, the decision or order sought and the grounds for seeking the decision or order.

(3) A notice of motion given by a party shall be filed with the Secretary and served on the parties not less than three days before the day fixed for the commencement of the hearing.

(4) Any party who wishes to answer a notice of motion shall file a written answer with the Secretary and serve a copy of it on the other parties.

(5) Where a party wishes to submit a document in support of a notice of motion or answer, the document shall accompany the notice or answer in question and the party shall file it with the Secretary and serve a copy of it on the other parties.

(6) Unless the Tribunal directs otherwise, a decision or order on a notice of motion shall be made in writing.

(7) Notwithstanding subrules (2) to (5), a notice of motion in connection with a matter that has not come to the attention of a party prior to the commencement of a hearing may be given orally at the hearing and shall be disposed of in accordance with such procedure as the Tribunal may direct.

Procedures where Hearing not Required

25. (1) Where, in any matter, a hearing is not required and the Tribunal intends not to proceed by way of a hearing, the Tribunal may:

- (a) dispose of the matter on the basis of the written documentation before it;
 - (b) require further information to be furnished by any party; or
 - (c) invite submissions from any party or any person who may have an interest in the matter and issue directions on procedure.
- (2) Where the Tribunal intends not to proceed by way of a hearing, the Tribunal shall issue a public notice informing the parties and any person who may have an interest in the proceeding of its intention and inviting them to make submissions as to whether a hearing should be held or not.
- (3) Where the Tribunal invites submissions from parties and interested persons, the Tribunal shall afford them with an opportunity to review the submissions made by other parties or interested persons and to file a reply.
- (4) Submissions from parties and interested persons shall be filed with the Secretary and served on all other parties.
- (5) Notwithstanding that the Tribunal has invited submissions pursuant to this rule, the Tribunal may determine that the matter shall be disposed of by means of a hearing.

Adjournments and Postponements of Hearing

26. (1) At any time during a hearing, the Tribunal may, on its own initiative or at the request of any party, adjourn a hearing on such terms, if any, as are just.

- (2) The Tribunal may postpone a hearing in a proceeding:
- (a) on its own initiative for any reason; or

(b) at the request of a party made to the Tribunal not later than 10 days before the day fixed for the commencement of the hearing, where the other parties consent thereto or where it would be appropriate to delay the hearing until the decision has been rendered in another case before the Tribunal or before any other court in Canada in which the issue is the same or substantially the same as the issue to be raised in the proceeding.

Communication of Information

27. Any person who wishes to communicate with the Tribunal, to obtain information in respect of the procedure followed by the Tribunal, or to inspect documents, exhibits or other material provided to the Tribunal, shall apply to the Secretary.

Decisions, Orders or Findings of the Tribunal

28. (1) Where the Tribunal makes a decision, declaration, order, finding or other final ruling in any proceeding, the Secretary shall, forthwith after it is made, send by hand or registered mail a copy of the decision, declaration, order, finding or ruling to each person who is a party to the proceeding and to each person who was provided with the Notice of Commencement of Inquiry, Notice of Review, Notice of Request for a Ruling, Notice of Reconsideration, Notice of Inquiry or other notice of commencement of the proceedings, as the case may be.

(2) The Secretary shall, forthwith after the making of a decision, declaration, order, finding or other final ruling by the Tribunal in a proceeding, cause a notice thereof to be published in the Canada Gazette.

(3) Where the Secretary is required by paragraph 43(2)(b) or paragraph 76(4.3)(a) of the Special Import Measures Act to send a copy of the reasons for making an order or finding in a proceeding to the persons specified in subsection 43(2) or paragraph 76(4.3)(a) of that Act, as the case may be, the Secretary shall also send a copy of the reasons by registered mail to every

other person who was provided with a notice of commencement of the proceeding.

Failure to Comply

29. Where a party to a proceeding has not met any requirement of these Rules or complied with any order or direction issued by the Tribunal, the Tribunal may:

- (a) stay the proceeding until it is satisfied that the requirement has been met or the order or direction has been complied with; or
- (b) make such order as it considers appropriate.

PART II

PROCEDURE FOR APPEALS

Application

30. This Part applies to proceedings in respect of:

(a) an appeal from an assessment, reassessment, rejection, decision or determination of the Minister of National Revenue or from a decision or re-determination of the Deputy Minister, as the case may be, pursuant to:

- (i) Section 67 of the Customs Act,
- (ii) Section 61 of the Special Import Measures Act,
- (iii) Sections 81.19, 81.21, 81.22, 81.23 or 81.33 of the Excise Tax Act,
- (iv) Section 18 of the Softwood Lumber Products Export Charge Act, and

(v) Section 13 or 63 of the Energy Administration Act; and

(b) with such modifications as the circumstances require, a re-hearing under subsection 68(2) of the Customs Act or paragraph 62(2)(b) of the Special Import Measures Act and a reference under Section 70 of the Customs Act as if they were an appeal.

Commencement of Appeal

31. (1) An appeal to the Tribunal shall be commenced by filing a Notice of Appeal in writing:

(a) with the Deputy Minister and the Secretary, in the case of an appeal under the Customs Act or the Special Import Measures Act; or

(b) with the Secretary, in the case of an appeal under the Excise Tax Act, the Softwood Lumber Products Export Charge Act or the Energy Administration Act.

(2) A Notice of Appeal may be in Form V and shall be accompanied by a copy of the assessment, reassessment, rejection, decision, determination or re-determination as the case may be, from which the appeal is launched.

Sending of Notice of Appeal

32. Except in the case referred to in Section 81.25 of the Excise Tax Act, the Secretary shall, forthwith after the filing of a Notice of Appeal pursuant to Rule 31, send to the respondent, by hand or registered mail, a copy of the Notice.

Extension of Time for Objection or Appeal under the Excise Tax Act

33. An application referred to in Section 81.32 of the Excise Tax Act for an extension of time for the serving of a notice of objection or for the institution of an appeal may be made in Form VI.

Brief

34. (1) The appellant shall, within 60 days after the filing of a Notice of Appeal pursuant to Rule 31, file with the Secretary a brief prepared in accordance with subrule (2) and serve forthwith a copy of the brief on the respondent.

(2) A brief referred to in subrule (1) shall:

(a) be dated and signed by the appellant or by the appellant's counsel, if any;

(b) be divided into paragraphs that are numbered consecutively and that set out:

(i) a concise statement of the grounds for appeal and of the material facts relevant to each ground,

(ii) a description of the goods in issue,

(iii) a concise statement of points in issue between the parties,

(iv) the statutory provisions relied on,

(v) a brief statement of argument to be made at the hearing, and

(vi) the nature of the decision, order, finding or declaration sought;

(c)include a table of authorities on which the appellant intends to rely and a copy of those authorities that are reasonably necessary in the presentation of the appeal;

(d)include a copy of any document that may be useful in explaining or supporting the appeal; and

(e)contain the name, address for service, telephone number and fax number, if any, of the appellant and of the appellant's counsel, if any.

Response

35. (1) The respondent shall, within 60 days after the service of the appellant's brief pursuant to Rule 34, file with the Secretary a response prepared in accordance with subrule (2) and serve forthwith a copy of the response on the appellant.

(2) A response referred to in subrule (1) shall:

(a) be dated and signed by the respondent or the respondent's counsel, if any;

(b) be divided into paragraphs that are numbered consecutively and that set out:

(i)a concise statement of the grounds on which the appeal is opposed and of the material facts relevant to each ground,

(ii)an admission or denial of each ground, and of each of the material facts relevant to each ground, set out in the appellant's brief,

(iii) the issues to be decided,

(iv) the statutory provisions relied on,

(v) a brief statement of argument to be made at the hearing, and

(vi) the relief sought:

(c) include a table of authorities on which the respondent intends to rely and a copy of those authorities that are reasonably necessary in the presentation of the appeal;

(d) include a copy of any document that may be useful in explaining or supporting the appeal; and

(e) contain the name, address for service, telephone number and fax number, if any, of the respondent and of the respondent's counsel, if any.

Written Submission and Documentary Evidence

36. After the filing of the appellant's brief and the respondent's response, the Tribunal may direct that written submissions with respect to such matters as the Tribunal directs or documentary evidence, including expert evidence, on which the appellant or the respondent intends to rely be filed within the time fixed by the Tribunal.

Time for Hearing

37. Where an appeal is to be disposed of by means of a hearing, the Tribunal shall fix a date for the hearing of the appeal.

Notice of Hearing

38. When the Tribunal has fixed the date for a hearing, the Secretary shall notify all parties and the parties' counsel in the appeal in such manner as the Tribunal considers appropriate in the circumstances.

Notice of Appearance by a Person in an Appeal under the Customs Act or the Special Import Measures Act

39. An appearance referred to in Subsection 67(2) of the Customs Act or Subsection 61(2) of the Special Import Measures Act may be made in Form I.

Intervention by Vendor of Goods under Subsection 81.33(9) of the Excise Tax Act

40. An intervention referred to in Subsection 81.33(9) of the Excise Tax Act may be made by filing with the Secretary a Notice of Intervention in Form VII.

Party Added

41. (1) The Secretary shall add the person or vendor, as the case may be, who files a Notice pursuant to Rule 39 or 40, as a party to the appeal.

(2) On the addition of any party under subrule (1), the Secretary shall serve a copy of the Notice referred to in that subrule on every person who, at the time the Notice is filed, is a party to the appeal.

(3) Subject to subrule 19(2), each person or vendor added as a party to an appeal is entitled to receive from the Secretary copies of all of the documents that were filed by each party to the appeal prior to the day the person or vendor was added as a party.

(4) Subject to Rule 17, each party to the appeal shall serve on the person or vendor added as a party thereto a copy of all of the documents served by that party on other parties to the appeal on or after the day the person or vendor is added.

Intervention under Section 81.34 of the Excise Tax Act

42. (1) An application referred to in Section 81.34 of the Excise Tax Act for an order permitting a person to intervene in an appeal may be made in Form VIII.

(2) A party served with a copy of an application made under subrule (1) may, within 14 days after that service or within such greater or lesser time as the Tribunal may direct, file with the Secretary a response to the application dealing with the facts raised in the application and stating whether a hearing should be held to determine the application.

(3) Where a party files a response in accordance with subrule (2), the party shall forthwith serve a copy thereof on the applicant and on each other party to the appeal.

(4) The Tribunal may dispose of an application made under subrule (1) on the basis of the written documentation or may hear it at the beginning of the hearing of the appeal or at such time and place as is fixed by the Tribunal including, if any pre-hearing conference is directed to be held in connection with the appeal, at the pre-hearing conference.

(5) Where the Tribunal directs that a hearing be held to hear an application referred to in subrule (1), the Secretary shall send to the applicant and to each of the parties to the appeal a notice of the time and place of the hearing of the application.

(6) Where an order permitting an applicant to intervene in an appeal is made by the Tribunal under Section 81.34 of the Excise Tax Act:

(a) a copy of the order shall be sent by the Secretary to each party to the appeal;

(b) subject to subrule 19(2), the person permitted to intervene is entitled to receive from the Secretary copies of all of the documents that were filed by each party to the appeal prior to the day the order is made; and

(c) subject to Rule 17, each party to the appeal shall serve on the person permitted to intervene copies of all of the documents served by that party on other parties to the appeal on or after the day the order is made.

Assistance under Subsection 81.34(2) of the Excise Tax Act

43. The application referred to in Subsection 81.34(2) of the Excise Tax Act for an order permitting a person to render assistance to the Tribunal by way of argument in an appeal may be made in Form IX.

Discontinuance

44. (1) A party who instituted an appeal may, on or before the day fixed for the commencement of the hearing of the appeal, discontinue the appeal by filing a Notice of Discontinuance with the Secretary and by serving forthwith a copy of the Notice on the other parties to the appeal.

(2) A Notice of Discontinuance referred to in subrule (1) may be in Form X.

Decision by Consent

45. Except in an appeal under Section 67 of the Customs Act or Section 61 of the Special Import Measures Act, where all of the parties to an appeal agree, in a written consent signed by those parties and filed with the Secretary, to a decision disposing of the appeal in whole or in part by the Tribunal, the Tribunal may:

(a) dispose of the appeal in accordance with the consent without an oral hearing;

(b) direct that the appeal be heard in whole or in part; or

(c) direct that written representations be filed.

Failure to Appear

46. Where, at a hearing, a party fails to appear, the Tribunal may allow the appeal, dismiss the appeal or give such other direction as is just.

Re-hearing under Subsection 68(2) of the Customs Act or Paragraph 62(2)(b) of the Special Import Measures Act

47. (1) Where a matter is referred back to the Tribunal by the Federal Court for re-hearing pursuant to Subsection 68(2) of the Customs Act or for re-hearing pursuant to paragraph 62(2)(b) of the Special Import Measures Act, the Secretary shall forthwith cause to be published in the Canada Gazette a Notice of Re-hearing setting out the following information:

(a) the subject-matter of the re-hearing;

(b) the statutory authority for and the circumstances leading to the re-hearing; and

(c) such other information as the Tribunal specifies.

(2) The Secretary shall send, by hand or by registered mail, a copy of a Notice of Re-hearing referred to in subrule (1) to each person who was a party to the appeal.

(3) After the publication of a Notice of Re-hearing referred to in subrule (1), the Tribunal may fix a time and place for a pre-hearing conference for the purpose of deciding the following matters:

(a) the issues to be addressed in the re-hearing;

(b) the record of the re-hearing;

(c) the introduction of new evidence, the calling of witnesses and the filing of any written submission;

(d) the date of the hearing; and

(e) any other matter respecting the procedure to be followed in the re-hearing that would aid in the orderly conduct of the proceeding.

PART III

REFERENCE UNDER SECTIONS 33, 34 AND 35 OF THE SPECIAL IMPORT MEASURES ACT

Application

48. This Part applies to a reference made to the Tribunal pursuant to Section 33, 34 or 35 of the Special Import Measures Act for its advice on a question mentioned in that Section in relation to any matter before the Deputy Minister respecting the dumping or subsidizing of goods.

Notice of Reference

49. A reference shall be made by filing with the Tribunal written notice of the reference of the question to the Tribunal.

Sending of Notice to the Deputy Minister

50. Where a reference is made by a government or by a person other than the Deputy Minister, the Secretary shall forthwith give to the Deputy Minister written notice of the reference of the question to the Tribunal.

Information to be Filed by the Deputy Minister

51. Where a reference is made in relation to any matter before the Deputy Minister, the Deputy Minister shall file with the Tribunal:

(a)any written complaint made to the Deputy Minister pursuant to Subsection 31(1) of the Special Import Measures Act in relation to that matter;

(b)all information and material relating to that matter that was in the possession of the Deputy Minister when the Deputy Minister made the decision or reached the conclusion as a result of which the question was referred to the Tribunal; and

(c)a list of the names and addresses of all persons and governments that, pursuant to that Act, were given notice of the decision or conclusion of the Deputy Minister as a result of which the question was referred to the Tribunal.

Advice

52. (1) The Tribunal shall render its advice on a reference in writing and give reasons for its advice.

(2) Where the Tribunal has rendered its advice, the Secretary shall forthwith send a copy of the advice to the Deputy Minister and to every person and government named in the list referred to in paragraph 51(c).

PART IV

INQUIRIES UNDER SECTION 42 OF THE SPECIAL IMPORT MEASURES ACT

Application

53. This Part applies to an inquiry in respect of material injury or retardation made by the Tribunal pursuant to Section 42 of the Special Import Measures

Act as a consequence of the receipt by the Secretary of a notice of a preliminary determination of dumping or subsidizing in respect of goods.

Notice of Commencement of Inquiry

54. Where a notice of a preliminary determination of dumping or subsidizing is filed with the Secretary pursuant to the Special Import Measures Act, the Secretary shall forthwith cause to be published in the Canada Gazette a notice of commencement of inquiry setting out the following information:

- (a) the statutory authority for the inquiry;
- (b) the subject-matter of the inquiry, together with such other details of the inquiry as the Tribunal directs;
- (c) the date on or before which any interested party must file a Notice of Appearance in Form I;
- (d) the date on or before which counsel for an interested party must file a Notice of Appearance in Form II and, where appropriate, a Declaration and Undertaking in Form III;
- (e) the date on or before which any person referred to in Subsection 45(2) of that Act who wants an opportunity to make representations to the Tribunal on the question referred to in that Subsection must make a request to the Tribunal for that opportunity;
- (f) the date on or before which any written submission must be filed;
- (g) the number of copies of each written submission that must be filed;
- (h) instructions with respect to the filing of confidential information;

(i) the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the inquiry may be obtained;

(j) the place and time fixed for commencement of a hearing in the inquiry; and

(k) such other information as the Tribunal specifies.

Sending of a Notice of Commencement of Inquiry

55. The Secretary shall send, by hand or registered mail, a copy of a notice of commencement of inquiry referred to in Rule 54 to:

(a) the Deputy Minister;

(b) all persons known by the Tribunal to be interested parties;

(c) the government of any country from which goods in respect of which the preliminary determination was made were exported to Canada;

(d) any trade association known to the Tribunal to have a particular interest in the subject-matter of the inquiry; and

(e) such other persons as are required.

Information to be filed by the Deputy Minister - Preliminary Determination

56. Where the Deputy Minister makes a preliminary determination of dumping or subsidizing with respect to goods pursuant to Section 38 of the Special Import Measures Act, the Deputy Minister shall cause to be filed with the Secretary, in addition to the written notice referred to in paragraph 38(3)(b) of that Act, the following materials:

(a) a copy of the preliminary determination;

(b) a detailed statement of all estimates and of all things specified by the Deputy Minister pursuant to paragraph 38(1)(a) or (b) of that Act;

(c) a document that contains information with respect to:

(i) domestic producers, importers into Canada and exporters to Canada of such goods who are known to the Deputy Minister, and

(ii) the volume of the goods imported into Canada and the proportion of those goods found by the Deputy Minister to be dumped or subsidized; and

(d) such other materials that contain information with respect to any matter referred to in any of paragraphs (a) to (c) as is in the Deputy Minister's possession and as the Tribunal may from time to time request.

Information to be Filed by the Deputy Minister - Final Determination

57. Where the Deputy Minister makes a final determination of dumping or subsidizing with respect to goods pursuant to Section 41 of the Special Import Measures Act, the Deputy Minister shall cause to be filed with the Secretary, in addition to the written notice referred to in Subsection 41(3) of that Act, the following materials:

(a) a copy of the final determination;

(b) a detailed statement of all things specified by the Deputy Minister pursuant to Subsection 41(1) of that Act;

(c) a document that contains information with respect to:

(i) domestic producers, importers into Canada and exporters to Canada of such goods who are known to the Deputy Minister, and

(ii) the volume of the goods imported into Canada and the proportion of those goods found by the Deputy Minister to be dumped or subsidized; and

(d) such other materials that contain information with respect to any matter referred to in any of paragraphs (a) to (c) as is in the Deputy Minister's possession and as the Tribunal may from time to time request.

Information to be Provided by the Secretary

58. In any inquiry, the Secretary shall, forthwith after expiration of the date on or before which interested parties or counsel for the interested parties are required to file a Notice of Appearance, provide each counsel and, where a party to the inquiry is not represented by counsel, that party, with the following information:

(a) the names and addresses of all parties to the inquiry and their counsel, if any;

(b) the codes assigned to the parties' exhibits; and

(c) the procedure for the filing of documents.

Availability of Information

59. In any inquiry, the Secretary shall, forthwith after expiration of the date on or before which interested parties are required to file a Notice of Appearance, make available:

(a) in such manner as the Tribunal directs, to each counsel who has filed a Declaration and Undertaking and who has been granted access to the confidential information, all of the confidential information provided to the Tribunal for the purposes of the inquiry; and

(b) in such manner as the Tribunal directs, to all counsel and to any party who is not represented by counsel, all of the information provided to the

Tribunal for the purposes of the inquiry that has not been designated as confidential.

Written Submissions and Documentary Evidence

60. (1) The Tribunal may, at any time, direct any party to an inquiry to file with the Tribunal, on or before a date fixed by the Tribunal, the following material:

- (a) a written submission with respect to such matters as the Tribunal directs;
- (b) a statement of the evidence adduced or to be adduced by the party;
- (c) the documentary evidence that the party wishes to file; and
- (d) a description of any exhibit in other than documentary form that the party intends to adduce at the inquiry.

(2) Where a complainant referred to in Section 31 of the Special Import Measures Act or any other person who alleges that the dumping or subsidizing of goods that are the subject of an inquiry has caused material injury or retardation is a party to the inquiry, the date fixed pursuant to subrule (1) for the filing of the material referred to therein by any party other than the complainant or other person shall be later than the date fixed pursuant to that Subsection for the filing of that material by the complainant or other person.

Information to be Provided by Parties

61. In considering any issue of material injury or retardation, the Tribunal may, at any time, direct a party to an inquiry to produce information in respect of the following matters:

(a) the actual and potential volume of the dumped or subsidized goods imported into Canada and the effect of the dumped or subsidized goods on the prices of like goods in the domestic market, including:

(i) whether there has been a significant increase in the importation into Canada of the dumped or subsidized goods, either absolutely or relative to the production or consumption in Canada of like goods,

(ii) whether the prices of the dumped or subsidized goods imported into Canada have significantly undercut the prices of like goods produced and sold in Canada, and

(iii) whether the effect of the importation into Canada of the dumped or subsidized goods has been:

(A) to depress significantly the prices of like goods produced and sold in Canada, or

(B) to limit to a significant degree increases in the prices of like goods produced and sold in Canada; and

(b) the impact of the dumped or subsidized goods on the production of like goods in Canada and all relevant economic factors and indices that have a bearing on the industry that comprises or includes the like goods, including, without limiting the generality of the foregoing,

(i) actual and potential decline in output, sales, market share, profits, productivity, return on investments and utilization of production capacity,

(ii) factors affecting domestic prices, and

(iii) actual and potential negative effects on cash flow, inventories, employment, wages, industry growth, ability to raise capital or investments and, in the case of subsidization of an agricultural product, whether there

has been an increase in the financial burden on a federal or provincial government agricultural support programme in Canada; and

(c) any other matters relevant to the inquiry.

Representations under Section 45 of the Special Import Measures Act

62. (1) Where, in relation to an inquiry, a person referred to in Subsection 45(2) of the Special Import Measures Act wishes to make representations to the Tribunal on the question referred to in that Subsection, the request to make representations shall be made in writing to the Secretary and shall be filed with the Secretary on or before the date specified in the Notice of Commencement of Inquiry as the date on or before which the request must be made.

(2) Where, in relation to an inquiry, a person referred to in Subsection 45(2) of the Special Import Measures Act is also an interested party who intends to file a Notice of Appearance, the person may, if the person wishes to make representations to the Tribunal on the question referred to in that subsection, include in the Notice of Appearance a request to the Tribunal for an opportunity to make such representations.

(3) A request made by a person pursuant to subrule (1) shall outline the person's interest in the inquiry and shall give the name, address for service, telephone number and fax number, if any, of the person and of the person's counsel, if any.

Notification

63. (1) Where a person makes a request in accordance with Rule 62, the Tribunal shall notify the person, in such manner as is appropriate in the circumstances, of the place and time fixed by the Tribunal for the making of the representations by the person on the question referred to in Subsection 45(2) of the Special Import Measures Act and the manner in which the representations shall be made.

(2) Each party to an inquiry and the party's counsel, if any, are entitled to be present during any oral representations and to receive a copy of any written representations made in relation to the inquiry by any person pursuant to Subsection 45(2) of the Special Import Measures Act.

(3) The Tribunal shall afford each party referred to in subrule (2) an opportunity to respond to the representations.

PART V

RECOMMENCEMENT OF INQUIRY UNDER SECTION 44 OF THE SPECIAL IMPORT MEASURES ACT

Application

64. This Part applies to the recommencement of an inquiry made by the Tribunal under paragraph 44(1)(a) or (b) of the Special Import Measures Act where, pursuant to an application for judicial review under the Federal Court Act or an application under Section 96.1 of the Special Import Measures Act, an order or finding of the Tribunal is set aside or is set aside in relation to particular goods.

Notice of Recommencement of Inquiry

65. Where an inquiry is recommenced pursuant to Subsection 44(1) of the Special Import Measures Act, the Secretary shall forthwith cause to be published in the Canada Gazette a notice of recommencement of inquiry setting out, with such modifications as the circumstances require, the same information as is referred to in paragraphs 54(a) to (k).

Sending of Notice

66. The Secretary shall forthwith send, by hand or registered mail, a copy of the notice of recommencement of inquiry referred to in Rule 65 to the persons referred to in paragraph 44(2)(a) of the Special Import Measures Act.

Written Submission

67. Where an order or finding of the Tribunal is set aside or is set aside in relation to particular goods pursuant to an application for judicial review under the Federal Court Act or an application under Section 96.1 of the Special Import Measures Act but the matter is not referred back to the Tribunal for determination, any person interested in making any written submission on the question of whether the Tribunal should recommence the inquiry in accordance with paragraph 44(1)(b) of the Special Import Measures Act shall file a submission within 21 days after the final disposition of the application.

Application of Part IV

68. Subject to any direction or order of the Tribunal, Part IV applies, with such modifications as the circumstances require, to a recommencement of an inquiry.

PART VI

REVIEWS UNDER SECTION 76 OF THE SPECIAL IMPORT MEASURES ACT

Application

69. This Part applies to a review of an order or finding by the Tribunal:

(a)pursuant to Subsection 76(2) or (2.1) of the Special Import Measures Act, whether on the Tribunal's own initiative or at the request of the Deputy Minister or any other person or of any government; or

(b)pursuant to Subsection 76(2.2) of that Act, where the order or finding is referred back to the Tribunal pursuant to an order made by a binational panel under Subsection 77.15(3) or (4) of that Act.

Request for Review

70. (1) A request to the Tribunal for a review shall be filed with the Secretary and shall set out the following information:

(a)the name, address for service, telephone number and fax number, if any, of the person making the request and of the person's counsel, if any;

(b) the nature of the person's interest in the order or finding;

(c)the grounds on which the person believes initiation of the review is warranted and a statement of the facts on which the grounds are based; and

(d)the nature of the order or finding that the person believes the Tribunal should make pursuant to Subsection 76(4) or (4.1) of the Special Import Measures Act on completion of the review.

(2) On receipt of a request referred to in subrule (1), the Tribunal shall inform each party to the inquiry that resulted in the order or finding of its receipt of the request and shall afford them an opportunity to make representations to the Tribunal concerning the request.

Notice of Review

71. (1) Where the Tribunal decides to review an order or finding or where the Tribunal is required to review an order or finding pursuant to Subsection 76(2.2) of the Special Import Measures Act, the Secretary shall forthwith

cause to be published in the Canada Gazette a notice of review setting out the following information:

(a) the statutory authority for the review;

(b) the subject-matter of the review, together with such other details of the review as the Tribunal directs;

(c) the date on or before which any interested party must file a Notice of Appearance in Form I:

(d) the date on or before which counsel for an interested party must file a Notice of Appearance in Form II and, where appropriate, a Declaration and Undertaking in Form III;

(e) the date on or before which any written submission must be filed;

(f) the number of copies of each written submission that must be filed;

(g) instructions with respect to the filing of confidential information;

(h) the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the review may be obtained;

(i) the place and time fixed for commencement of a hearing in the review; and

(j) such other information as the Tribunal specifies.

(2) The Secretary shall send, by hand or by registered mail, a copy of a notice of review to each person to whom and government to which the Secretary would be required by Rule 55 to send a copy of the notice if it were a notice of commencement of inquiry referred to in Rule 54.

Notice of Expiration

72. (1) Where an order or finding will be deemed to be rescinded at the expiration of a five-year period in accordance with Subsection 76(5) of the Special Import Measures Act, the Secretary shall, not later than eight months before the expiration of that period, cause to be published in the Canada Gazette a notice of expiration setting out the following information:

(a) the date on which the order or finding will be deemed to be rescinded;

(b) the date on or before which any written submission must be filed by interested parties requesting or opposing the initiation of a review of the order or finding;

(c) the number of copies of each written submission that must be filed;

(d) instructions with respect to the filing of confidential information;

(e) the address to which written submissions or correspondence may be sent or delivered and at which information may be obtained; and

(f) such other information as the Tribunal specified.

(2) After the publication of a notice of expiration referred to in subrule (1), the Tribunal shall:

(a) if it does not receive a request for a review from a person or government and it decides not to initiate a review on its own initiative pursuant to Subsection 76(2) of the Special Import Measures Act, advise the interested parties of that decision:

(b) if it decides not to initiate a review pursuant to Subsection 76(2) of that Act at the request of a person or government, make an order to that effect in accordance with Subsection 76(3.1) of that Act; or

(c)if it decides to initiate a review, ask the Secretary to cause a notice of review referred to in Rule 71 to be published.

Application of Certain Rules

73. Rules 59 and 60 apply, with such modifications as the circumstances require, to a review conducted by the Tribunal.

PART VII

RULINGS UNDER SECTION 89 AND RECONSIDERATIONS UNDER PARAGRAPH 91(1)(g) OF THE SPECIAL IMPORT MEASURES ACT

Application

74. This Part applies:

(a)to a request made to the Tribunal by the Deputy Minister pursuant to Section 89 of the Special Import Measures Act for a ruling on the question of which of two or more persons is the importer in Canada of goods imported or to be imported into Canada on which duty is payable or has been paid or will be payable if the goods are imported; and

(b)to a reconsideration, under paragraph 91(1)(g)of that Act, of an order or finding made by the Tribunal in an inquiry referred to in paragraph 90(c) of that Act.

Notice of Request by Deputy Minister

75. Where the Deputy Minister makes a request pursuant to Subsection 89(1) of the Special Import Measures Act, the Deputy Minister:

(a) shall give notice of the request to:

(i) each of the two or more persons referred to in that Subsection,

(ii) where the Deputy Minister made the request at the request of a person interested in the importation of the goods referred to in that Subsection, that person interested, and

(iii) each exporter to Canada of those goods; and

(b) shall file with the Secretary a list of the names, addressed for service, telephone number and fax number, if any, of the persons given notice pursuant to paragraph (a).

Notice of Request for a Ruling

76. (1) Forthwith after the list referred to in paragraph 75(b) is filed with the Secretary, the Secretary shall cause to be published in the Canada Gazette a notice of request for a ruling setting out the following information:

(a) the statutory authority for the request for a ruling;

(b) the matter or thing that is the subject of the request for a ruling, together with such details or explanation of the request for a ruling as the Tribunal directs;

(c) the date on or before which any written submission must be filed with the Tribunal and the number of copies of any written submission that must be filed,

(d) instructions with respect to the filing of confidential information;

(e) a statement as to whether the Tribunal has or has not directed that a hearing be held;

(f) where the Tribunal has directed that a hearing be held, the following information, namely:

(i) the place and time fixed for commencement of the hearing or, if the place and time have not been fixed, a statement that notice of the place and time fixed for the hearing will be given to any person who files with the Secretary a written request for such a notice,

(ii) the date on or before which any person interested in the matter or thing must file with the Tribunal a Notice of Appearance in Form I, and

(iii) the date on or before which counsel for any person who files a Notice of Appearance in Form I must file with the Tribunal a Notice of Appearance in Form II and, where appropriate, a Declaration and Undertaking in Form III;

(g) the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the request for a ruling may be obtained; and

(h) such other information as the Tribunal specifies.

(2) The Secretary shall send, by hand or by registered mail, a copy of a notice of request for a ruling to the following persons:

(a) the Deputy Minister; and

(b) each person shown on the list referred to in paragraph 75(b).

Request for Reconsideration

77. A request to the Tribunal to reconsider, pursuant to paragraph 91(1)(9) of the Special Import Measures Act an order or finding made by it in an inquiry referred to in paragraph 90(c) of that Act shall be filed with the Secretary and shall set out the following information:

(a) the name, address for service, telephone number and fax number, if any, of the person making the request and of the person's counsel, if any;

(b) the nature of the person's interest in the order or finding;

(c) the grounds on which the person believes reconsideration of the order or finding is warranted and a statement of the facts on which the grounds are based; and

(d) the nature of the action that the person believes the Tribunal should take pursuant to paragraph 91(3)(a) of that Act on completion of the reconsideration.

Notice of Reconsideration

78. Where the Tribunal decides, on its own initiative or on request, to reconsider an order or finding pursuant to paragraph 91(1)(g) of the Special Import Measures Act, the Secretary shall forthwith cause to be published in the Canada Gazette a notice of reconsideration setting out the following information:

(a) the statutory authority for the reconsideration;

(b) the matter or thing that is the subject of the reconsideration, together with such details or explanation thereof as the Tribunal directs;

(c) the date on or before which any written submission must be filed with the Tribunal and the number of copies of the written submission that must be filed;

(d) instructions with respect to the filing of confidential information;

(e) a statement as to whether the Tribunal has or has not directed that a hearing be held;

(f) where the Tribunal has directed that a hearing be held, the following information, namely,

(i)the place and time fixed for commencement of the hearing or, if the place and time have not been fixed, a statement that notice of the place and time fixed for the hearing will be given to any person who files with the Secretary a written request for such a notice,

(ii)the date on or before which any person interested in the matter or thing must file with the Tribunal a Notice of Appearance in Form I, and

(iii)the date on or before which counsel for any person who files a Notice of Appearance in Form I must file with the Tribunal a Notice of Appearance in Form II and, where appropriate, a Declaration and Undertaking in Form III;

(g)the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the reconsideration may be obtained; and

(h) such other information as the Tribunal specifies.

Sending of Notice

79. The Secretary shall send, by hand or registered mail, a copy of the notice of reconsideration referred to in Rule 78 to the following persons and governments:

(a)where reconsideration of the order or finding referred to in that rule was initiated by the Tribunal at the request of a person interested, the person interested;

(b) the Deputy Minister;

(c)each domestic producer of goods that are like the goods to which the order or finding applies;

(d) all parties to the inquiry in which the order or finding was made and governments to which notice of the making of the order or finding was given by the Tribunal; and

(e) such other person as the Tribunal specifies.

Forwarding of Notice of Action Taken and Reasons

80. In addition to the persons referred to in paragraph 91(3)(b) of the Special Import Measures Act, the Secretary shall forward by registered mail the notice of action taken and copies of the reasons for that action referred to in that paragraph to every other person to whom and government to which the Secretary was required by Rule 79 to send a copy of a Notice of Reconsideration.

Application of Certain Rules

81. Rules 58 to 60 apply, with such modifications as the circumstances require, to a request referred to in Subsection 89(1) of the Special Import Measures Act and any re-hearing in connection with a reconsideration by the Tribunal pursuant to paragraph 91(1)(g) of that Act.

PART VIII

COMPLAINTS BY DOMESTIC PRODUCERS

Application

82. This Part applies to a written complaint filed with the Tribunal under Subsection 23(1) or (1.1) of the Act by any domestic producer of goods that are like or directly competitive with any goods being imported into Canada, or any person or association acting on behalf of any such domestic producer, alleging that the imported goods are being imported in such

increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods.

Additional Information Accompanying a Written Complaint

83. In addition to providing the information set out in Subsections 23(2) and (3) of the Act, a complaint filed with the Tribunal shall be signed by the complainant or by the complainant's counsel, if any, and shall be accompanied by the following information:

(a) the name, address for service, telephone number and fax number, if any of the complainant and of the complainant's counsel, if any;

(b) a list of any documents that may be useful in explaining or supporting the complaint;

(c) a list of any other interested parties;

(d) the actual and potential volume of the goods imported into Canada and the effect of the imported goods on prices of like or directly competitive goods in Canada, including:

(i) whether there has been a significant increase in the importation into Canada of the goods, either absolutely or relative to the production or consumption in Canada of like or directly competitive goods,

(ii) whether the prices of the goods imported into Canada have significantly undercut the prices of like or directly competitive goods produced and sold in Canada, and

(iii) whether the effect of the importation into Canada of the goods has been:

(A) to depress significantly the prices of like or directly competitive goods produced and sold in Canada, or

(B)to limit to a significant degree increases in the prices of like or directly competitive goods produced and sold in Canada; and

(e)the impact of the imported goods on domestic producers of like or directly competitive goods in Canada and all relevant economic factors and indices that have a bearing on the industry that comprises or includes the like or directly competitive goods, including, without limiting the generality of the foregoing.

(i)actual and potential decline in output, sales, market share, profits, productivity, return on investments and utilization of production capacity,

(ii) factors affecting domestic prices, and

(iii)actual and potential negative effects on cash flow, inventories, employment, wages, industry growth and ability to raise capital or investments.

PART IX

REFERENCES UNDER SECTION 18, 19, 19.1 OR 20 OF THE ACT

Application

84. This Part applies to a reference made to the Tribunal:

(a)pursuant to Section 18 of the Act, for inquiry into and report to the Governor in Council on any matter in relation to the economic, trade or commercial interests of Canada;

(b)pursuant to Section 19 of the Act, for inquiry into and report to the Minister on any tariff-related matter, except a matter referred to in Part X;

(c) pursuant to Section 19.1 of the Act, for inquiry into and report to the Governor in Council on any matter in relation to the importation of goods that are entitled to the benefit of the United States Tariff of Schedule I to the Customs Tariff; and

(d) pursuant to Section 20 of the Act, for inquiry into and report to the Governor in Council on any matter in relation to the importation of goods or to the provision by persons normally resident outside Canada of services in Canada.

Notice of Inquiry

85. Where, pursuant to Section 18, 19, 19.1 or 20 of the Act, a matter is referred to the Tribunal for inquiry and report, the Secretary shall cause to be published in the Canada Gazette a notice of inquiry setting out the following information:

(a) the statutory authority for the inquiry;

(b) the matter or thing that is the subject of the inquiry, together with such details or explanation of the inquiry as the Tribunal directs;

(c) the date on or before which any written submission must be filed with the Tribunal and the number of copies of any written submission that must be filed;

(d) instructions with respect to the filing of confidential information;

(e) a statement as to whether the Tribunal has or has not directed that a hearing be held;

(f) where the Tribunal has directed that a hearing be held, the following information, namely:

(i)the place and time fixed for commencement of the hearing or, if the place and time have not been fixed, a statement that notice of the place and time fixed for the hearing will be given to any person who files with the Secretary a written request for such a notice,

(ii)the date on or before which any person interested in the matter or thing must file with the Tribunal a Notice of Appearance in Form I; and

(iii)the date on or before which counsel for any person who files a Notice of Appearance in Form I must file with the Tribunal a Notice of Appearance in Form II and, where appropriate, a Declaration and Undertaking in Form III;

(g)the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the inquiry may be obtained; and

(h) such other information as the Tribunal specifies.

Sending of Notice

86. The Secretary shall send, by hand or registered mail, a copy of a notice of inquiry referred to in Rule 85 to:

(a)where the inquiry is in relation to goods, all domestic producers, importers into Canada and exporters to Canada of such goods who are known to the Tribunal;

(b)where the inquiry is in relation to the provision of services, all persons who provide the services in Canada who are known to the Tribunal;

(c)the government of any country that is considered by the Tribunal to have an interest in the inquiry;

(d)any trade association that appears to the Tribunal to have a particular interest in the inquiry; and

(e) such other persons as the Tribunal specifies.

Hearing to be Held

87. (1) Notwithstanding that a notice of inquiry referred to in Rule 85 states that the Tribunal has not directed that a hearing be held, the Tribunal may, at any time after publication of the notice in the Canada Gazette, direct that a hearing be held if, at any time after that publication, it considers that the holding of a hearing is necessary or desirable.

(2) Where, pursuant to subrule (1), the Tribunal directs that a hearing be held, the Secretary shall cause to be published in the Canada Gazette a notice setting out that the Tribunal has so directed.

(3) Any notice given pursuant to subrule (2) shall include the information set out in paragraph 78(f).

Application of Certain Rules

88. Rules 59 and 60 apply, with such modifications as the circumstances require, to an inquiry conducted by the Tribunal in connection with a reference to which this Part applies.

PART X

REFERENCES UNDER SECTION 19 OF THE ACT ON MATTERS RELATING TO THE GENERAL PREFERENTIAL TARIFF OR TO THE PROVISION OF DUTY-FREE ENTRY FOR IMPORTS FROM COMMONWEALTH CARIBBEAN COUNTRIES

Application

89. This Part applies to a standing reference made to the Tribunal pursuant to Section 19 of the Act by the Minister for inquiry and report into:

(a) any written complaint made to the Tribunal by a domestic producer of goods alleging that like or directly competitive goods that originate in a country listed in Schedule III to the Customs Tariff as a beneficiary of the General Preferential Tariff and that are being imported into Canada at the General Preferential Tariff rates of duty under Section 37 of the Customs Tariff are causing or threatening injury to that producer; or

(b) any written complaint made to the Tribunal by a domestic producer of goods alleging that like or directly competitive goods that originate in a country listed in Schedule III to the Customs Tariff as a beneficiary of the Commonwealth Caribbean Countries tariff treatment and that are being imported into Canada at the free rate of duty under Section 53 of the Customs Tariff are causing or threatening injury to that producer.

Complaints by Producers

90. (1) A written complaint by a domestic producer referred to in Rule 89 shall be:

(a) signed by the complainant or by the complainant's counsel;

(b) filed with the Secretary; and

(c) accompanied by the following information:

(i) the facts on which the allegations are based,

(ii) the nature of the relief sought,

(iii) the goods in issue,

- (iv) the sources from which the goods are being imported at preferential rates,
- (v) the name, address for service, telephone number and fax number, if any, of the complainant and of the complainant's counsel, if any,
- (vi) a list of any documents that may be useful in explaining or supporting the complaint,
- (vii) a list of any other domestic producers of the goods referred to in the complaint, indicating which, if any, of those producers support the complaint,
- (viii) the information referred to in paragraphs 83(d) and (e), and
- (ix) such other information as is available to the complainant to prove the facts referred to in subparagraph (i).

(2) Where the Tribunal is satisfied that the information provided by the complainant and any other information examined by it discloses a reasonable indication that the domestic producer has suffered, or may suffer, injury as a result of imports occurring or that might occur under the tariff preferences referred to in Rule 89, the Tribunal shall commence an inquiry into the complaint.

Notice of Expiration

91. Where a temporary safeguard measure that has been implemented by the Government of Canada to prevent or remedy the injury caused to domestic producers by imports under the tariff preferences referred to in Rule 89 is scheduled to expire, the Secretary shall, in order for the Tribunal to receive and review submissions that may be made by persons interested in relation to the future status of the measure, cause to be published in the Canada Gazette, not later than 10 months before the measure is scheduled to expire, a notice of expiration setting out the following information:

- (a) the date on which the measure is scheduled to expire;
- (b) the statutory authority for the review of the measure;
- (c) the date on or before which any written submissions must be filed;
- (d) the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the review of the measure may be obtained; and
- (e) such other information as the Tribunal specifies.

Application of Certain Rules

92. Rules 59, 60 and 85 to 87 apply, with such modifications as the circumstances require, to an inquiry conducted by the Tribunal in connection with a standing reference to which this Part applies.

SCHEDULE

(Section 2)

FORM I

(Rules 10, 39, 54, 71, 76, 78 and 85)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

IN THE MATTER OF: (An appeal, inquiry, review, etc.) under the (state the Act) with respect to (specify the parties, the goods or the matter that is the subject of the appeal, inquiry, review, etc.)

NOTICE OF APPEARANCE (PARTY)

The Secretary
Canadian International Trade Tribunal
Ottawa, Ontario
K1A 0G7

Notice is hereby given that the undersigned, (an interested party, an intervener or a person who has an interest) in the (appeal, inquiry, review, etc.), intends to appear at the hearing commencing

the _____ day of _____, 19 _____.

The undersigned is (an interested party, intervener or person who has an interest) because (state the nature of interest)

The undersigned will not be represented by counsel.

or

The undersigned will be represented by counsel, whose name is

and whose address for service is

Dated _____ at

this _____ day of

_____ 19 ____ .

Signature:

(Print)

Name:

Address:

NOTE: Interested parties, interveners and persons who have an interest may type this form on their own letterhead.

Any irrelevant paragraph or words should be omitted.

Counsel must file a Notice of Appearance in Form II of the Canadian International Trade Tribunal Rules.

For access to confidential information, counsel must file a Declaration and Undertaking in Form III of the Canadian International Trade Tribunal Rules.

FORM II

(Subrule 10(2) and Rules 54, 71, 76, 78 and 85)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

IN THE MATTER OF: (An inquiry, a review, etc.) under the (state the Act) with respect to (specify the parties, the goods or the matter that is the subject of the inquiry, review, etc.)

NOTICE OF APPEARANCE (COUNSEL)

The Secretary
Canadian International Trade Tribunal
Ottawa, Ontario
K1A 0G7

Notice is hereby given that the undersigned appears as counsel for

a party before the Tribunal in the above matter.

The undersigned's address for service is:

Dated _____ at _____

this _____ day of _____ 19____
_____ .

Signature:

—

(Print) _____ Name:

Address:

FORM III

(Subrule 16(1) and Rules 54, 71, 76, 78 and 85)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

IN THE MATTER OF: (An appeal, an inquiry, a review, etc.) under the
(specify the Act) with respect to (state or describe the matter before the
Tribunal)

DECLARATION AND UNDERTAKING

I, (name), act as counsel of record for (name of party that I represent).

In this capacity, I request access to the confidential information in the record of the proceeding.

DECLARATION

I hereby declare that:

(a) I am ordinarily resident in Canada;

(b) I am not a director, servant or employee of a party to the proceeding for which I act or of any other person known by me to be a party in the proceeding; and

(c) I have read and understand Subsection 45(3) of the Canadian International Trade Tribunal Act relating to the non-disclosure of information that is in its nature confidential.

UNDERTAKING

I hereby undertake:

(a) to use the information disclosed under the conditions of this Undertaking exclusively for duties performed in respect of the subject proceeding;

(b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access to such information or to personnel of the Canadian International Trade Tribunal;

(c)not to reproduce, in any manner, information disclosed under the conditions of this Undertaking without prior written approval by the Canadian International Trade Tribunal;

(d)to keep confidential and to protect the information disclosed under the conditions of this Undertaking in the following manner, namely:

(i)I will keep in my office or under my control, at all times, the complete set of documents made available to me under the conditions of this Undertaking, and

(ii)I will store all documents and materials containing information disclosed under the conditions of this Undertaking in a locked vault, safe or other secure storage device when the documents and materials are not being used;

(e)to return to the Secretary, under the direction of the Secretary, all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts and memoranda based on such information, or to destroy such documents and materials and to file with the Secretary a certificate of destruction pertaining to the destroyed documents and materials at the end of the proceeding or within 10 days after the end of my participation in the proceeding;

(f)if the party that I represent files a Notice of Change of Counsel of Record, within 10 days after the filing of that Notice:

(i)to return to the Secretary, under the direction of the Secretary, all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts and memoranda based on such information,

(ii)to destroy such documents and materials and to file with the Secretary a certificate of destruction pertaining to such destroyed documents and materials, or

(iii)to entrust such documents and materials to the new counsel who is replacing me in the proceeding, who has signed a Declaration and Undertaking and who has been granted access to such information;

(g)to report promptly to the Canadian International Trade Tribunal any violation of a Declaration and Undertaking; and

(h)to inform the Canadian International Trade Tribunal immediately of any changes in the facts referred to in this Undertaking.

Dated _____ at _____

this _____ day of _____
_____ 19 _____.

Signature: _____

(Print) _____ Name: _____

Address: _____

FORM IV
(Subrule 20(2))

CANADIAN INTERNATIONAL TRADE TRIBUNAL
OTTAWA, CANADA

SUBPOENA

IN THE MATTER OF

TO: (name and address of witness)

YOU ARE HEREBY SUMMONED AND REQUIRED TO ATTEND BEFORE THE TRIBUNAL at a hearing to be held in the above matter at the Canadian International Trade Tribunal Hearing Room No. _____, at _____ (address), on _____ (day), (date), at _____ (time) and so from day to day until your attendance is no longer required, to give evidence pertaining to the matter in question.

YOU ARE REQUIRED to bring with you and produce at the specified time and place the following documents and things: (set out the nature and date of each document and give particulars sufficient to identify each document and thing).

IN WITNESS WHEREOF this Subpoena is signed for the Canadian International Trade Tribunal by its Secretary at Ottawa, Ontario, this _____ day of _____
19 ____ .

(SEAL) _____
Secretary

NOTE: You are entitled to be paid the like fees and allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Federal Court.

This subpoena was issued at the request of, and inquiries may be directed to:
(Name, address and telephone number of the party or counsel serving the subpoena)

FORM V
(Subrule 31(2))

CANADIAN INTERNATIONAL TRADE TRIBUNAL

BETWEEN:

(name)

Appellant

and

(name)

Respondent

NOTICE OF APPEAL

TAKE NOTICE THAT (name) appeals to the Canadian International Trade Tribunal (state the statutory provision under which the appeals made and identify the assessment, reassessment, rejection, decision, determination or re-determination, as the case may be, under appeal).

Date: _____

(Signature)

(Set out the name, address for service, telephone number and fax number (if any) of the appellant or appellant's counsel)

TO: The Secretary
Canadian International Trade Tribunal
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7

FORM VI

(Rule 33)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

BETWEEN:

(name)

Appellant

and

(name)

Respondent

APPLICATION FOR AN EXTENSION OF TIME FOR THE SERVING
OF A NOTICE OF OBJECTION OR FOR THE INSTITUTION OF AN
APPEAL UNDER SECTION 81.32 OF THE EXCISE TAX ACT

I, (insert name and full postal address of the applicant) hereby apply for an order extending the time within which a notice of objection may be served under Section 81.15 or 81.17 of the Excise Tax Act or within which an appeal may be instituted under Section 81.19 of that Act. (State the relevant statutory provision and strike out the unnecessary words).

(Set out the reasons why the applicant is or was not able to comply with the time limitation).

Date: _____

(Signature)

(Set out name, address for service, telephone number and fax number, if any, of the applicant or the applicant's counsel)

TO: The Secretary
Canadian International Trade Tribunal
365 Laurier Avenue West

Ottawa, Ontario
K1A 0G7

NOTE: Subsection 81.32(2) of the Excise Tax Act requires that the applicant file with the Tribunal three copies of the application.

FORM VII
(Rule 40)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

BETWEEN:

(name)

Appellant

and

(name)

Respondent

NOTICE OF INTERVENTION UNDER SUBSECTION 81.33(9) OF THE
EXCISE TAX ACT

Notice of Intervention is hereby given by (insert the name and full postal address of the intervener) in the appeal of or the application for an extension of time limited for instituting an appeal by (insert the name of the appellant) made on the (insert the date of the notice of appeal or the application for an extension of time for the institution of an appeal).

Date: _____

(Signature)

(Set out the name, address for
service, telephone number
and fax number, if any,
of the intervener or the
intervener's counsel)

TO: The Secretary
Canadian International Trade Tribunal
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7

FORM VIII
(Subrule 42(1))

CANADIAN INTERNATIONAL TRADE TRIBUNAL

BETWEEN:

(name)

Appellant

and

(name)

Respondent

APPLICATION FOR AN ORDER PERMITTING INTERVENTION IN
AN APPEAL UNDER SECTION 81.34 OF THE EXCISE TAX ACT

I (insert the name and full postal address of the applicant) hereby apply for an order permitting me to intervene in the appeal of (insert name of the appellant) made on the (insert the date of the Notice of Appeal).

A. (Describe the nature of the applicant's interest in the appeal.)

B. (State the facts on which the application is based.)

Date: _____

(Signature)

(Set out name, address for service,
telephone number and fax number
(if any) of the applicant or
the applicant's counsel)

TO: The Secretary
Canadian International Trade Tribunal
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7

NOTE: Section 81.34 of the Excise Tax Act requires that a notice of the application be filed with the Tribunal and that a copy of it be served on the parties to the appeal at least 14 days before the application is returnable.

FORM IX

(Rule 43)

CANADIAN INTERNATIONAL TRADE TRIBUNAL

BETWEEN:

(name)

Appellant

and

(name)

Respondent

APPLICATION FOR AN ORDER UNDER SUBSECTION 81.34(2) OF
THE EXCISE TAX ACT PERMITTING A PERSON TO RENDER
ASSISTANCE TO THE TRIBUNAL BY WAY OF ARGUMENT IN
AN APPEAL

I (insert the name and full postal address of the applicant) hereby apply for an order permitting me to render assistance to the Canadian International Trade Tribunal by way of argument in the appeal of (insert name of appellant) made on the (insert the date of the Notice of Appeal).

Date:

(Signature)

(Set out name, address for service, telephone number and fax number, if any, of the applicant or the applicant's counsel)

TO: The Secretary
Canadian International Trade Tribunal
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7

FORM X
(Subrule 44(2))

CANADIAN INTERNATIONAL TRADE TRIBUNAL

BETWEEN:

(name)

Appellant

and

(name)

Respondent

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the appellant discontinues the appeal (identify the appeal, including the decision under appeal).

Date: _____

(Signature)

(Set out the name, address for service,

telephone number and fax number (if any)
of the appellant or the appellant's counsel)

TO: The Secretary
Canadian International Trade Tribunal
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7

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REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Rules.)

Description

The Canadian International Trade Tribunal is an administrative tribunal established by the Canadian International Trade Tribunal Act (S.C. 1988. C. 56). Section 39 of that Act provides that the Tribunal may, after consultation with the Minister of Finance and with the approval of the Governor in Council, make rules generally governing the proceedings, practice and procedures of the Tribunal and specifying any additional information that must accompany a written complaint filed by a domestic producer.

These Rules will complement the Canadian International Trade Tribunal Act and the other Acts of Parliament under which the Tribunal exercises and performs its duties. These Acts are the Customs Act, the Excise Tax Act, the Special Import Measures Act, the Energy Administration Act and the Softwood Lumber Products Export Charge Act.

These Rules are divided into various parts covering rules of general application to all proceedings before the Tribunal, as well as specific rules for various Tribunal functions such as appeals, re-hearings, references, inquiries, recommencement of inquiries, reviews, rulings, reconsiderations, complaints by domestic producers and other references. Sample forms are provided in the Schedule to the Rules.

Alternatives considered

The statute offers limited scope for the consideration of alternatives. The Canadian International Trade Tribunal Act provides for rules to cover the proceedings noted above. These are intended to help the Tribunal in its administration of the Act.

As the Tribunal retains the jurisdiction, powers and procedures of its predecessors - the Canadian Import Tribunal, the Tariff Board and the Textile and Clothing Board - these Rules, except for contextual modifications, will reflect past practice.

In the meantime, the proceedings of the Tribunal have been governed by the Canadian Import Tribunal Rules that, pursuant to Section 61 of the Canadian International Trade Tribunal Act, continue in force to the extent that they are not inconsistent with that Act. They have also been governed by the Informal Guide for Parties in Appeals before the Tariff Board that sets out certain steps to be followed in appeals under the Customs Act, the Excise Tax Act, the Special Import Measures Act, the Energy Administration Act and the Softwood Lumber Products Export Charge Act.

For these reasons, no alternatives were considered.

Consistency with Regulatory Policy and Citizens' Code

These Rules are consistent with Regulatory Policy. They simplify procedures and restrict legalities to the minimum in accordance with the objective expressed in the statute to circumstances and considerations of fairness permit.

With regard to the Citizens' Code of Regulatory Fairness, these Rules are provided for in the enabling statute and are required for the operation of the Tribunal. They also ensure that the rights of parties before the Tribunal are protected in accordance with the Canadian Charter of Rights and Freedoms.

Early notice was given in the 1991 Federal Regulatory Plan, Proposal No. 716-FIN.

Anticipated impact

These Rules are intended to provide comprehensive and transparent guidance to parties appearing before the Tribunal and generally to facilitate fair and efficient Tribunal proceedings.

Fairness will be achieved in these Rules by provision of:

(a) detailed requirements respecting notices of hearing, of commencement of inquiry, of expiry, of review, of reconsideration or other notices of commencement of the proceedings; and

(b) criteria for the guidance of the Tribunal in considering any issue of injury, material injury or retardation or serious injury respecting the dumping, subsidization or importation of goods.

Efficiency will be achieved in these Rules by provisions that:

(a) require the filing of briefs within certain time-limits in appeal proceedings;

(b) reduce potential abuse of postponements and adjournments in appeal proceedings;

(c) allow decision by consent in certain appeal proceedings;

(d) define procedures for re-hearings, recommencements of inquiry and references; and

(e) specify the additional information that must accompany a written complaint made by domestic producers.

By providing fair and efficient hearings, the Tribunal will ensure that the parties are heard both in a timely manner and in accordance with the principles of fundamental justice.

While the anticipated impacts of the new rules cannot be measured precisely in economic terms, it may be said that the amalgamation of the inquiry and appeal functions of the Canadian Import Tribunal, the Textile and Clothing Board and the Tariff Board more efficiently focuses expertise and knowledge regarding trade matters and ensures that the treatment of import and other international trade issues is harmonized.

The Tribunal has few opportunities to introduce cost recovery in its programmes. However, it attempts where possible to have parties, appearing before it, absorb the cost of service and the reproduction of documents.

Consultation

Throughout the development of these Rules, all affected parties were consulted. The Tribunal conducted informal consultations with 79 persons (individuals, firms and counsel who have regular dealings with the Tribunal and some members of the academic community). Their views were sought on the draft set of Rules. Two public sessions were held in July 1990 with the affected parties who wanted to provide oral comments on the draft Rules. Consultation also took place with the Department of Finance and the Department of Justice. Notice was given in the June issue of Tribunal's Bulletin inviting all interested persons who receive the Bulletin to provide their comments on the draft Rules. The Bulletin is distributed to about 2,800 persons listed on the Tribunal's mailing list. All views and comments were considered prior to the finalization of these Rules.

Compliance mechanism

Section 17 of the Canadian International Trade Tribunal Act vests the Tribunal with the powers, rights and privileges of a superior court of record.

Hence, the Tribunal has the authority of a superior court to enforce its orders and duly exercise its jurisdiction.

For further information, contact:

Clifford Sosnow

or

Debra Steger

Legal Services

Canadian International Trade Tribunal

365 Laurier Avenue West

Ottawa, Ontario

K1A 0G7

(613) 990-2437

Extract

Canada Gazette, Part II

29 December 1993

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Canadian International Trade Tribunal Rules, Amendment

Minister of Supply and Services Canada 1993
QUEEN'S PRINTER FOR CANADA, OTTAWA, 1993

Registration

SOR/93-601 15 December 1993

CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

Canadian International Trade Tribunal Rules, Amendment

P.C. 1993-2101 15 December 1993

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to Subsection 39(1)* of the Canadian International Trade Tribunal Act**, is pleased hereby to approve the making by the Canadian International Trade Tribunal, after consultation with the Minister of Finance, of the amendments to the Canadian International Trade Tribunal Rules, approved by Order in Council P.C. 1991-1446 of 13 August 1991***, in accordance with the schedule hereto.

SCHEDULE

1. (1) The definition "intervener" in Rule 2 of the Canadian International Trade Tribunal Rules is amended by deleting the word "or" at the end of paragraph (a) thereof, by adding the word "or" at the end of paragraph (b) thereof and by adding thereto the following paragraph:

(c) is an interested party that has been granted leave of the Tribunal to intervene in any proceedings in relation to a complaint pursuant to Section 30.17 of the Act;

(2) The definition "party" in Section 2 of the said Rules is amended by adding thereto, immediately after paragraph (c) thereof, the following paragraph:

(c.1)in the case of a complaint under subsection 30.11(1) of the Act, the complainant, the government institution or an intervener;

2. Subrule 12(1) of the said rules are further amended by deleting the word "and" at the end of paragraph (a) thereof, and by revoking paragraph (b) thereof and substituting the following therefor:

(b)in the case of an inquiry under Part XI, the original and three copies of the document; and

(c) in the case of any other proceeding, the original and eight copies of the document.

3. The said Rules are further amended by adding thereto immediately after Part X thereof, the following Part:

*S.C. 1993, C. 44, S. 45

**R.S., C. 47 (4th Supp.)

***SOR/91-499, 1991 Canada Gazette Part II, p. 2912

PART XI

INQUIRIES INTO PROCUREMENT COMPLAINTS BY POTENTIAL SUPPLIERS

93. In this Part

"send", in respect of any document, information or notification, means to transmit by hand or registered mail or by fax or other electronic means capable of producing for the recipient, at the destination, a printed copy of the document, information or notification; (envoyer)

"working day" means a day that is not a Saturday or a holiday. (jour ouvrable)

Application

94. This Part applies to inquiries into complaints made by potential suppliers under Subsection 30.11(1) of the Act.

Computation of Time

95. In this Part where anything is to be done within eight days or less, any day within that period that is not a working day shall not be counted.

Day of Filing of Complaints

96. (1) A complaint shall be considered to have been filed:

(a) on the day it was received by the Tribunal; or

(b) in the case of a complaint that does not comply with Subsection 30.11(2) of the Act, on the day that the Tribunal receives the information that corrects the deficiencies in order that the complaint comply with that subsection.

(2) Subrule 12(6) does not apply to this Rule.

Receipt of a Complaint

97. Where the Tribunal receives a complaint, the Secretary shall forthwith send a notification in writing to the complainant of the receipt of the complaint.

Notice of Filing of a Complaint

98. Where the Tribunal determines that a complaint complies with Subsection 30.11(2) of the Act, the Secretary shall forthwith send a notification in writing of the filing of the complaint to the complainant, the government institution and any other party that the Tribunal considers to be an interested party.

Deficient Complaint

99. (1) Where the Tribunal determines that a complaint does not comply with Subsection 30.11(2) of the Act, the Secretary shall forthwith send a notification in writing to the complainant to that effect and which notice specifies the deficiencies to be corrected, the corrective action required and the period determined by the Tribunal within which the corrective action must be taken.

(2) Where the corrective action referred to in Subrule (1) has been taken, and the Tribunal determines that the complaint complies with Subsection 30.11(2) of the Act, the Secretary shall forthwith send a notification in writing of the filing of the complaint to the complainant, the government institution and any other party that the Tribunal considers to be an interested party.

Transmission of Complaint

100. (1) The Secretary shall send a copy of the complaint to the person designated in the solicitation documentation by the government institution to receive complaints in respect of the procurement.

(2) Where no person has been designated in the solicitation documentation to receive complaints, the Secretary shall send the documents referred to in Subrule (1):

(a) in the case of a government institution that is a department or ministry of State, to the deputy head; and

(b) in any other case, to the chief executive officer of the appropriate body.

Notification of Inquiry

101. Where the Tribunal decides to conduct an inquiry, the Secretary shall forthwith send a notification in writing to the complainant, the government institution and any other party that the Tribunal considers to be an interested party.

Exchange of Information

102. (1) Where a designated contract that is the subject of a complaint has been awarded, the government institution shall forthwith, upon receipt of the complaint, send a notification in writing to the Tribunal that states:

(a) the name and address of the contractor to whom the designated contract was awarded; and

(b) if known by the government institution, the name of a representative of the contractor.

(2) The Secretary shall forthwith send a copy of the complaint to the contractor referred to in Subrule (1).

(3) Subject to Rule 16, the Secretary shall forthwith send a copy of every document that the Tribunal has received from the contractor referred to in Subrule (1) to the government institution, the complainant and all interveners.

Government Institution Report

103. (1) Subject to Subrule 107(5), a government institution shall file a report with the Tribunal not later than 25 days after it has received the documents referred to in Rule 100.

(2) A report referred to in Subrule (1) shall contain a copy of the following:

(a) the complaint;

(b) the solicitation, including the specifications or portions thereof relevant to the complaint;

(c) all other documents relevant to the complaint;

(d) a statement that sets out all findings, actions and recommendations of the government institution and responds fully to all allegations of the complaint; and

(e) any additional evidence or information that may be necessary in order to resolve the complaint.

(3) The Secretary shall, forthwith after receiving a report referred to in Subrule (1):

(a) send to the complainant a copy of the statement referred to in paragraph (2)(d) and of the documents referred to in paragraph (2)(c), except any documents that the complainant is not otherwise authorized by law to receive; and

(b) make available to all interveners a copy of the material referred to in paragraph (a).

(4) The government institution may, within the time-limits set out in Subrule (1) request from the Tribunal, in writing, an extension of the time-limit referred to in that subrule and shall set out in the request the reasons therefor.

(5) The Tribunal shall determine, in writing, whether the specific circumstances of the complaint warrant an extension of the time-limit for

the submission of the report and, where appropriate, may set a new date for the submission of the report.

Filing Comments on the Government Institution Report

104. (1) Subject to Subrule 107(5), the complainant shall, within seven days after the day on which the Tribunal sends a copy of the statement to the complainant pursuant to Subrule 103(3), file with the Tribunal comments on that statement or a request that the case be decided on the existing record.

(2) The Tribunal shall, forthwith after receiving the comments referred to in Subrule (1), send a copy thereof to the government institution and all interveners.

(3) On the request of the complainant filed within the time-limit referred to in Subrule (1) and where the specific circumstances of the complaint warrant an extension of that time-limit, the Tribunal may extend the time-limit for the filing of the comments referred to in that subrule.

Hearing

105. (1) The Tribunal may, on the request of the complainant or on the Tribunal's own initiative, hold a hearing on the merits of a complaint.

(2) A request for a hearing shall be made at the earliest possible time in the complaint proceeding.

(3) A hearing shall be held on a date and at a time and place set by the Tribunal and the Secretary shall send notice thereof to all parties.

(4) The date referred to in Subrule (3) shall be not earlier than seven days after the report of the government institution is filed with the Tribunal.

(5) The complainant, the government institution and all interveners may file comments with the Tribunal in respect of the complaint at the hearing.

(6) The Tribunal may request that a hearing be held if at any time during the proceeding it decides that a hearing is needed in order to clarify material issues.

106. (1) All parties to a hearing may appear in person or may be represented at the hearing by counsel or by an agent.

(2) Subject to Subrule (3), a hearing before the Tribunal shall be held in public.

(3) The Tribunal may, on its own initiative, hold a hearing in camera or may hold the hearing in camera on the request of any party to the complaint, where the party establishes that the circumstances of the procurement justify an in camera hearing.

(4) Only those persons who are referred to in Rule 23 may attend an in camera hearing.

(5) Subrule 25(2) does not apply to this Part.

Express Option

107. (1) Where the complainant, the government institution or any intervenor requests an expeditious determination on a complaint, the Tribunal shall consider the feasibility of using the procedure set out in Subrule (5), referred to herein as the "express option".

(2) The Tribunal may apply the express option in the case of any complaint that is suitable for resolution within 45 days after it is filed.

(3) A request for the express option shall be made in writing and shall be submitted to the Secretary not later than three days after the complaint is filed.

(4) The Tribunal shall determine whether to apply the express option within two days after receiving a request therefor and shall notify the government institution, the complainant and all interveners if the express option is to be applied.

(5) Where the express option is applied, the time-limits set out in this Part for filing documents shall not apply and the following procedure shall be followed:

(a) the government institution shall, within 10 days after the day on which it is notified by the Tribunal that the express option is to be applied, file with the Tribunal a report on the complaint containing the material referred to in Subrule 103(2);

(b) the Secretary shall, forthwith after receiving a report referred to in paragraph (a), send to the complainant a copy of the documents referred to in paragraph 103(3)(a) and make a copy of that material available to all interveners;

(c) the complainant and an intervener shall, within five days after the day on which the Secretary sends the statement of the government institution referred to in paragraph 103(2)(d) to the complainant pursuant to paragraph (b), file with the Secretary comments on that statement or a request that the case be decided on the existing record;

(d) the Secretary shall, forthwith after receiving the comments referred to in paragraph (c), send a copy thereof to the government institution and all interveners; and

(e) the Tribunal shall issue a determination on the complaint within 45 days after the day on which the complaint is filed.

Service of Documents

108. Where, in any proceedings under this Part a document is required by these Rules to be served, the Secretary shall effect that service.

4. Sections 1, 2 and 3 come into force on the day that Sections 44 and 45 of An Act to Implement the North American Free Trade Agreement, being Chapter 44 of the Statutes of Canada, 1993 come into force.

N.B.The Regulatory Impact Analysis Statement for these Regulations appears at page 4536, following SOR/93-599.

Registration

SOR/93-599 15 December 1993

CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

Canadian International Trade Tribunal Rules, Amendment

P.C. 1993-2099 15 December 1993

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to Subsection 39(1)* of the Canadian International Trade Tribunal Act**, is pleased hereby to approve the amendment made by the Canadian International Trade Tribunal, after consultation with the Minister of Finance, of the Canadian International Trade Tribunal Rules, approved by Order in Council P.C. 1991-1446 of 13 August 1991***, in accordance with the schedule hereto.

SCHEDULE

1. Section 82 of the Canadian International Trade Tribunal Rules is revoked and the following substituted therefor:

82. This Part applies in respect of a written complaint filed with the Tribunal under Subsections 23(1), (1.01), (1.02), (1.03) or (1.1) of the Act by any domestic producer of goods that are like or directly competitive with any goods being imported into Canada, or any person or association acting on behalf of any such domestic producer.

2. (1) Section 83 of the said Rules is amended by adding thereto, immediately after paragraph (a) thereof, the following paragraphs:

(a.1) the name and description of the imported goods concerned, their tariff classification, their current tariff treatment, and the name and description of the like or directly competitive domestic goods concerned;

(a.2) the locations of the establishments in which the complainant produces the domestic goods;

(a.3) the percentage of domestic production of the like or directly competitive goods that the complainant accounts for and the basis for claiming that the complainant is representative of an industry;

(a.4) the name and locations of all other domestic establishments in which the like or directly competitive goods are produced;

(a.5) data on total domestic production of the like or directly competitive goods for each of the five most recent full years;

*S.C., 1993, C. 44, S. 45

**R.S., c. 47 (4th Supp.)

***SOR/91-499, 1991 Canada Gazette Part II, p. 2912

(2) All that portion of paragraph 83(d) of the said Rules preceding subparagraph (i) thereof is revoked and the following substituted therefor:

(d)the actual and potential volume of the goods imported into Canada for each of the five most recent full years that form the basis of the complaint and the effect of the imported goods on the prices of like or directly competitive goods in Canada, including:

3. The heading "References under Section 18, 19, 19.1 or 20 of the Act" preceding Section 84 of the said Rules is revoked and the following substituted therefor:

REFERENCES UNDER SECTIONS 18, 19, 19.01, 19.1 OR 20 OF THE ACT

4. Subsection 84(c) of the said Rules is revoked and the following substituted therefor:

(c)pursuant to Section 19.01 or 19.1 of the Act, for inquiry into and report to the Governor in Council on any matter in relation to the importation of goods that are entitled to the benefit of the United States Tariff of Schedule I or II to the Customs Tariff or to the benefit of the Mexico Tariff or Mexico-United States Tariff of Schedule I to the Customs Tariff; and

5. (1) All that portion of Section 85 of the said Rules preceding paragraph (a) thereof is revoked and the following substituted therefor:

85. Where, pursuant to Sections 18, 19, 19.01, 19.1 or 20 of the Act, a matter is referred to the Tribunal for inquiry and report, the Secretary shall cause to be published in the Canada Gazette a notice of inquiry setting out the following information:

(2) Paragraph 85(b) of the said Rules is revoked and the following substituted therefor:

(a.1) the name of the complainant;

(b) the imported goods that are the subject of the inquiry, including their tariff classification, together with such details or explanation of the inquiry as the Tribunal directs;

(3) Paragraph 85(g) of the said Rules is revoked and the following substituted therefor:

(g) the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the inquiry may be obtained and non-confidential documents filed in the course of the inquiry may be inspected, as well as the name, address and telephone number of the office to be contacted for more information; and

6. Sections 1 to 5 come into force on the day that Section 45 of An Act to Implement the North American Free Trade Agreement, being Chapter 44 of the Statutes of Canada, 1993, comes into force.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Rules nor the Regulations.)

NOTICE

The NAFTA under its terms is scheduled to come into effect on 1 January 1994. If this timetable is to be adhered to, there is insufficient time to prepublish a draft of these NAFTA-related regulations. Accordingly should the NAFTA be proclaimed on 1 January 1994, these Regulations will come into effect on the same day. However, comments will be received until 1 March 1994 from interested parties. Comments are to be sent to the contact

person listed in this RIAS. Any amendments to the regulations necessitated by the comments will be made during 1994.

Description

Chapter 8 of the North American Free Trade Agreement (NAFTA) establishes rules and procedures under which a NAFTA Party may take "safeguard" action to provide temporary relief to industries adversely affected by an increase in imports. As in the FTA, Chapter 8 provides for bilateral and global safeguard action. In addition, Chapter 8 allows for goods from a NAFTA Party initially excluded from a global safeguard action to be subsequently included if a competent investigating authority determines that a surge in imports from that Party undermines the effectiveness of the action (surge inquiry). It also incorporates detailed procedures to guide the administration of safeguard measures.

The amendments to the Canadian International Trade Tribunal Rules with respect to Chapter 8 of the NAFTA provide a more specific list of the information which must accompany a safeguard complaint. The amendments also set out more precisely the information which must be included in the notice of inquiry published by the Tribunal.

The amendments to the Canadian International Trade Tribunal Regulations broaden the definition of "other interested parties", to specifically incorporate associations whose purpose is to represent the interests of consumers in Canada. The amendments also require that various notification procedures apply to surge inquiries and that for the purposes of commencing a surge inquiry, the Tribunal take into account specific factors.

Chapter 10 of the NAFTA establishes rules and procedures with respect to government procurement. It provides for the application of non-discriminatory rules with respect to the procurement of prescribed goods and services, including construction services, by listed federal government entities and enterprises. Moreover, Article 1017 sets forth a bid challenge procedure for procurement covered by Chapter 10. Bid challenges are a

mechanism whereby potential suppliers can complain about the bidding or contract award process. Article 1017(1)(g) requires that each Party designate an independent reviewing authority to receive bid challenges and make findings and recommendations.

The amendments to the Canadian International Trade Tribunal Rules (with respect to Chapter 10 of the NAFTA) and the North American Free Trade Agreement Procurement Regulations provide for detailed procedures regarding the Canadian International Trade Tribunal's new functions with respect to procurement complaints and its conduct of inquiries into such complaints filed by potential suppliers under the NAFTA.

Alternatives

The matters specified in the amendments are necessary for the Canadian safeguard and procurement review mechanisms to function in accordance with Canada's obligations under the NAFTA. No other alternatives were considered.

Benefits and costs

Chapter 8 of the NAFTA establishes disciplines on the use of safeguard actions designed to provide appropriate protection to domestic industries adversely affected by an increase in imports. These disciplines limit the scope for harassment of Canadian exporters and improve our security of access to NAFTA markets.

Chapter 10 of the NAFTA gives access to a significant portion of the government procurement market in each NAFTA country on a non-discriminatory basis and also provides for procurement review proceedings that are fast and conducted by independent authorities.

Consultation

The North American Free Trade Agreement, which was tabled in the House of Commons on 17 December 1992, was the result of extensive negotiations between Canada, the United States and Mexico. The Government issued the text and a synopsis of the Agreement. This documentation formed the basis for consultation with the public concerning the NAFTA and the emergency action and government procurement provisions provided for in Chapters 8 and 10 respectively.

Compliance and enforcement

The rules and regulations will be administered by the Canadian International Trade Tribunal. No compliance mechanism is needed.

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Registration
SOR/95-13 20 December 1994

CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

Canadian International Trade Tribunal Rules, Amendment

P.C. 1994-2143 20 December 1994

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to Subsection 39(1)* of the Canadian International Trade Tribunal Act**, is pleased hereby to approve the amendments made by the Canadian International Trade Tribunal, after consultation with the Minister of Finance, of amendments to the Canadian International Trade Tribunal Rules, approved by Order in Council P.C. 1991-1446 of 13 August 1991***, in accordance with the schedule hereto, effective on the day on which Section 41 of An Act to Implement the Agreement Establishing the World Trade Organization, Chapter 47 of the Statutes of Canada, 1994, comes into force.

SCHEDULE

1. (1) The portion of paragraph 83(d)1 of the Canadian International Trade Tribunal Rules before subparagraph (ii) is replaced by the following:

(d)the actual volume of the goods imported into Canada for each of the five most recent full years that form the basis of the complaint and the effect of

the imported goods on the prices of like or directly competitive goods in Canada, including:

(i) whether there has been a significant increase in the importation into Canada of the goods, either absolutely or relative to the production in Canada of like or directly competitive goods,

(2) Subparagraphs 83(e)(i) to (iii) of the Rules are replaced by the following:

(i) actual and potential changes in the level of production, employment, sales, market share, profits and losses, productivity, return on investments, utilization of production capacity, cash flow, inventories, wages, growth or ability to raise capital or investments, and

(ii) factors affecting domestic prices.