

# WORLD TRADE ORGANIZATION

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

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## NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

### CANADA

The following communication, dated 28 January 2004, is being circulated at the request of the Delegation of Canada.

In accordance with its obligations under Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (ADA) and Article 32.6 of the Agreement on Subsidies and Countervailing Measures (ASCM), the Government of Canada is pleased to notify the attached laws and regulations.

The attached laws and regulations replace the texts previously notified, compiled as G/ADP/N/1/CAN/3 and G/SCM/N/1/CAN/3, and modified by texts notified as G/ADP/N/1/CAN/3/Add.1 and G/SCM/N/1/CAN/3/Add.1. The attached laws and regulations are unofficial integrated texts. The texts are up to date on 31 August 2003, unless otherwise mentioned.

The key elements of the changes to the previously notified texts reflected in this notification include amendments:

- to implement the Canada-Chile Free Trade Agreement [see new subsection 14(2) of the *Special Import Measures Act* (SIMA) and the *Regulations Exempting Goods of Chile from the Application of Anti-dumping Measures*];
- related to the transformation of the former Department of Revenue into the Canada Customs and Revenue Agency<sup>1</sup>;
- to suspend the application of the provisions implementing the lapsed Articles 6.1, 8 and 9 of the ASCM [see new section 98 of the SIMA and the *Order Suspending Certain Provisions of the Special Import Measures Act*];
- of a technical nature, in relation to the payment, collection and refund of duties [see new subsection 2(10) and amended sections 8 and 11, 13.2(4) and 60(1)(b) of the SIMA];
- related to the creation of the Federal Court of Appeal, and the transfer of responsibility to this court of judicial review functions previously performed by the former appeal division of the Federal Court;

<sup>1</sup> As of 12 December 2003, the functions of the Canada Customs and Revenue Agency related to the texts notified hereby were transferred to the newly created Canada Border Services Agency by administrative decision. Any legislative or regulatory amendment related to that transfer will be notified in due course.

- related to the accession of the People's Republic of China to the WTO [see amended subsection 20(1) of the SIMA and new section 17.1 of the *Special Import Measures Regulations*]; and
- to prescribe factors for determining whether injury is caused by massive imports of the dumped or subsidized product, pursuant to Article 10.6 of the ADA and Article 20.6 of the ASCM [see new section 37.11 of the *Special Import Measures Regulations*].

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## SPECIAL IMPORT MEASURES ACT

### 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;

"amount of the subsidy" [Repealed, 1994, c. 47, s. 144]

"arbitration body" « *organe 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);

"Commissioner" « *commissaire* »

"Commissioner" means the Commissioner of Customs and Revenue, appointed under section 25 of the *Canada Customs and Revenue Agency Act*;

"Committee" « *Comité* »

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

"country" « *pays* »

"country", unless the context requires otherwise, includes

- (a) an external or dependent territory of a country and any other territory prescribed by regulation made by the Governor in Council, and
- (b) except for the purposes of proceedings respecting the dumping of goods, a customs union;

"country of export" « *pays d'exportation* »

"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" [Repealed, 1999, c. 17, s. 180]

"designated officer" « *agent désigné* »

"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 nationale* »

"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 à l'exportation* »

"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 d'un pays ALÉNA* »

"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;

"material injury" [Repealed, 1994, c. 47, s. 144]

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

"Minister" « *ministre* »

"Minister" means the Minister of National Revenue;

"NAFTA country" « *pays ALÉNA* »

"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 normale»*

"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 under section 43 or 44 that has not been rescinded under any of sections 76.01 to 76.1 and subsection 91(3) but, if the order or finding has been amended one or more times under any of sections 76.01 to 76.1, as last so amended, and
- (b) includes, for the purposes of sections 3 to 6 and 76 to 76.1, an order or finding made by the Tribunal under subsection 91(3) that has not been rescinded under any of sections 76.01 to 76.1 but, if the order or finding has been amended one or more times under any of sections 76.01 to 76.1, 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 Commissioner 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) the information that is available to the complainant to support the facts referred to in subparagraph (a)(ii),
  - (ii) such information as is prescribed, and
  - (iii) such other information as the Commissioner 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" means

- (a) in respect of goods, to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada, and
- (b) in respect of goods to which paragraph 32(2)(b) of the *Customs Act* applies, to receive the goods at the place of business of the importer, owner or consignee;

"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;



"Subsidies and Countervailing Duties Agreement" [Repealed, 1994, c. 47, s. 144]

"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 by the government of a country other than Canada for less than fair market value,

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 by the government of the country of origin or country of export on
  - (i) goods that, 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 remission, refund or drawback,
  - (ii) energy, fuel, oil and catalysts that are used or consumed in the production of exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback, or
  - (iii) goods incorporated into exported goods and that have been exempted or have been or will be relieved by means of remission, 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» ou «engagements»*

"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 Commissioner 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 États-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, common-law partnership 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, 1994, c. 47, s. 144]

## 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 Commissioner

(7.3) Notwithstanding that a subsidy is not limited in the manner referred to in paragraph (7.2)(a), the Commissioner 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 Commissioner 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 Commissioner is of the opinion that the presence is due to one of the reasons set out in paragraph (a) or (b), the Commissioner may find the subsidy not to be specific notwithstanding that, were it not for that opinion, the Commissioner 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 Commissioner

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

Application of *Customs Act*

(10) The *Customs Act* applies, with any modifications that the circumstances require, in respect of

- (a) the payment, collection or refund of any duty levied or returned under this Act;
- (b) the payment, collection, refund or waiver of interest on duty payable or returned under this Act; and
- (c) the time within which duties payable under this Act, or security posted under this Act, are deemed to be paid or posted.

R.S., 1985, c. S-15, s. 2; R.S., 1985, c. 23 (1st Supp.), s. 1, c. 1 (2nd Supp.), ss. 197, 213, c. 47 (4th Supp.), s. 52; 1988, c. 65, s. 23; 1993, c. 44, s. 201; 1994, c. 13, s. 7, c. 47, ss. 144, 185; 1999, c. 12, s. 1, c. 17, ss. 180, 183; 2000, c. 12, s. 291; 2001, c. 25, s. 91.

## 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, is threatening to cause injury or would have caused injury or retardation except for the fact that provisional duty was applied in respect of the goods, 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) If 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 terminated under paragraph 52(1)(d), there shall be levied, collected and paid a duty as provided under paragraphs (1)(a) and (b) on all of those goods that were

- (a) if paragraph 52(1)(a) applies, released on or after the later of
  - (i) the day on which the undertaking was violated, and
  - (ii) the ninetieth day before the day on which notice of termination was given under paragraph 52(1)(e); and
- (b) if paragraph 52(1)(b) or (c) applies, released on or after the day on which notice of termination was given under paragraph 52(1)(e).

R.S., 1985, c. S-15, s. 3; 1994, c. 47, ss. 145, 185(E); 1999, c. 12, s. 2.

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 Commissioner 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.

R.S., 1985, c. S -15, s. 4; 1988, c. 65, s. 25; 1994, c. 47, s. 146; 1999, c. 17, s. 183.

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 ninety days preceding the day on which the Commissioner 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.

R.S., 1985, c. S -15, s. 5; 1994, c. 47, s. 146; 1999, c. 17, s. 183.

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 ninety days preceding the day on which the Commissioner 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 Commissioner 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 subsidy on the imported goods as is a prohibited subsidy.

R.S., 1985, c. S -15, s. 6; 1994, c. 47, s. 146; 1999, c. 12, s. 52(E), c. 17, s. 183.

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 Commissioner 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 Commissioner 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.

R.S., 1985, c. S -15, s. 7; 1994, c. 47, ss. 147, 185; 1999, c. 17, s. 183.

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.

1994, c. 47, s. 148.

### *Provisional Duty*

Imposition of provisional duty

**8.** (1) Where the Commissioner 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 in Canada 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 Commissioner 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, within the time prescribed under the *Customs Act* for the payment of duties, at the option of the importer,

- (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 for provisional duty 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.

Imposition of provisional duties on referral back to Tribunal

(1.1) If an order or finding of the Tribunal under subsection 43(1), 76.02(4) respecting a review under subsection 76.02(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 beginning on the day on which the preliminary determination is made under subsection 38(1) 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, within the time prescribed under the *Customs Act* for the payment of duties, 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 for provisional duty 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.

Imposition of provisional duties on referral back from Federal Court of Appeal

(1.2) If an order or finding of the Tribunal under subsection 43(1), 76.02(4) respecting a review under subsection 76.02(1), or 91(3), other than an order or finding described in any of sections 3 to 6, is referred back to the Tribunal by the Federal Court of Appeal, 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 beginning on the day on which the preliminary determination is made under subsection 38(1) 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, within the time prescribed under the *Customs Act* for the payment of duties, 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 for provisional duty 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 under subsection (1), (1.1) or (1.2) 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 Commissioner causes the investigation to be terminated pursuant to subsection 35.1(1) or 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.

(3) and (4) [Repealed, 2001, c. 25, s. 92]

Suspension of collection

(5) Where the Commissioner 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) If the Commissioner terminates an undertaking under 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 under subsection 38(1) 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 Commissioner 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, within the time prescribed under the *Customs Act* for the payment of duties, at the option of the importer,

- (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 for provisional duty 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.

R.S., 1985, c. S-15, s. 8; R.S., 1985, c. 1 (2nd Supp.), s. 198; 1988, c. 65, s. 26; 1993, c. 44, s. 202; 1994, c. 47, ss. 149, 185(E); 1997, c. 14, s. 88; 1999, c. 12, ss. 3, 52(E), c. 17, ss. 183, 184; 2001, c. 25, s. 92.

#### *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 Courts 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.

R.S., 1985, c. S-15, s. 9; 1988, c. 65, s. 27; 1990, c. 8, s. 69; 2002, c. 8, s. 182.

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.

1993, c. 44, s. 204.

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).

1988, c. 65, s. 28.

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 Commissioner 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 Commissioner 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.

1988, c. 65, s. 28; 1999, c. 17, s. 183.

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 Commissioner 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 Commissioner 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.

1993, c. 44, s. 205; 1999, c. 17, s. 183.

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 Commissioner 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 Commissioner 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.

1988, c. 65, s. 28; 1999, c. 17, s. 183.

Duty reimposed on referral back

**9.4(1)** If an order of the Tribunal under subsection 76.01(5) or paragraph 76.03(12)(a) 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.

1988, c. 65, s. 28; 1993, c. 44, s. 206; 1999, c. 12, s. 4.

#### *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 Commissioner, 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 Commissioner, 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 Commissioner, 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 Commissioner, attributable to the export subsidy.

R.S., 1985, c. S-15, s. 10; 1999, c. 17, s. 183.

Duty payable by importer in Canada

**11.** The importer in Canada of any goods imported into Canada in respect of which duty, other than provisional duty, is payable shall, notwithstanding any security posted pursuant to section 8 or 13.2, pay or cause to be paid all such duties on the goods.

R.S., 1985, c. S-15, s. 11; R.S., 1985, c. 1 (2nd Supp.), s. 199; 1994, c. 47, s. 150; 1999, c. 17, s. 183; 2001, c. 25, s. 93.

Return of duty where order or finding set aside or rescinded

**12.** (1) Where, pursuant to an application for judicial review under the *Federal Courts 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 Courts 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 without delay after the other order or finding is made.

Return of duty

(2) If the Commissioner 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 Commissioner 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 Commissioner 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.

R.S., 1985, c. S-15, s. 12; 1988, c. 65, s. 29; 1990, c. 8, s. 70; 1993, c. 44, s. 207; 1999, c. 12, s. 5, c. 17, ss. 183, 184; 2002, c. 8, ss. 169(E), 182.

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.

1984, c. 25, s. 13.

**13.1** [Repealed, 2001, c. 25, s. 94]

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

Request for review

**13.2** (1) An exporter to Canada or producer of any goods to which an order or finding referred to in section 3 applies may request that the Commissioner review the normal value, export price or amount of subsidy in relation to those goods if the exporter or producer

- (a) establishes that they are not associated with any exporter who is in the same country as the goods that are subject to the order or finding and who had been given notice under subparagraph 34(1)(a)(i); and
- (b) 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 Commissioner receives a request under subsection (1), the Commissioner 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 Commissioner completes the review shall, within the time prescribed under the *Customs Act* for the payment of duties, 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 re-determination

(5) A confirmation or amendment of a normal value, export price or amount of subsidy under subsection (3) is, for the purposes of paragraph 57(b), deemed to be a re-determination of a normal value, export price or amount of subsidy, as the case may be, by a designated officer referred to in that paragraph.

*Exemption from Application of Act*

Exemption of goods from application of Act

**14.** (1) 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.

Exemption of goods of Chile from application of Act

(2) The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods of Chile from the application of this Act or any of its provisions. The exemption may be in respect of the dumping of those goods or that class.

Duration and conditions

(3) Regulations made under subsection (2) may specify the period during which the exemption applies and make it subject to conditions.  
R.S., 1985, c. S -15, s. 14; 1997, c. 14, s. 89.

**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 sixty 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 Commissioner or, where, in the opinion of the Commissioner, 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 sixty days that ends in that interval be taken into account, during such period of sixty 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 Commissioner 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.

R.S., 1985, c. S-15, s. 15; 1999, c. 17, s. 183.

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 Commissioner, 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 Commissioner, 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 Commissioner, 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 Commissioner 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 Commissioner, 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. R.S., 1985, c. S-15, s. 16; 1994, c. 47, s. 153; 1999, c. 17, s. 183.

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 Commissioner 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 Commissioner, the price is representative of the prices at which like goods were sold during that period.

R.S., 1985, c. S -15, s. 17; 1994, c. 47, s. 154; 1999, c. 17, s. 183.

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 trade-mark, as defined in the *Trade-marks 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 Commissioner,

- (a) the goods are being imported into Canada without that trade-mark 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 trade-mark or any other mark so closely resembling that trade-mark that it is likely to be taken therefor.

R.S., 1985, c. S-15, s. 18; 1999, c. 17, s. 183.

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 Commissioner, 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 Commissioner 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 Commissioner, 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.

R.S., 1985, c. S -15, s. 19; 1994, c. 47, s. 155; 1999, c. 17, s. 183.

Normal value where export monopoly

- 20.** (1) Where goods sold to an importer in Canada are shipped directly to Canada
- (a) from a prescribed country where, in the opinion of the Commissioner, 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, or
  - (b) from any other country where, in the opinion of the Commissioner,
    - (i) the government of that country has a monopoly or substantial monopoly of its export trade, and
    - (ii) 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 Commissioner 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 Commissioner 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 Commissioner designates for any case or class of cases; or

- (d) where, in the opinion of the Commissioner, 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 Commissioner, 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 goods in relation to their sale by the importer thereof.

#### Limitation

- (2) The Commissioner may not designate a country under paragraph (1)(d) if
  - (a) the like goods of that country are also the subject of investigation under this Act, unless the Commissioner is of the opinion that those goods are not dumped goods; or
  - (b) in the opinion of the Commissioner, the price of the like goods imported into Canada has been significantly influenced by a country described in paragraphs (1)(a) and (b).

R.S., 1985, c. S-15, s. 20; 1994, c. 47, s. 156; 1999, c. 12, s. 7, c. 17, ss. 183, 184; 2002, c. 19, s. 16.

#### Credit sales of like goods

**21.** (1) Where any sale of like goods referred to in section 17, paragraph 19(a), subparagraph 20(1)(c)(i) or paragraph 20(1)(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.

Adjustment of unit price

(1.1) The unit price arrived at under subsection (1) shall be adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, taxation and other matters that relate to price comparability between the goods sold to the importer in Canada and 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.

R.S., 1985, c. S -15, s. 21; 1999, c. 12, s. 8.

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 section 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.

1984, c. 25, s. 23.

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.

1994, c. 47, s. 157.

*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).

1984, c. 25, s. 24.

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 Commissioner 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 on 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 Commissioner, 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.

R.S., 1985, c. S -15, s. 25; 1994, c. 47, s. 158; 1999, c. 17, s. 183.

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(1)(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.

R.S., 1985, c. S -15, s. 26; 1999, c. 12, s. 9.

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.

Adjustment of unit price

(1.1) The unit price arrived at under subsection (1) shall be adjusted in the prescribed manner and circumstances.

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.

R.S., 1985, c. S -15, s. 27; 1999, c. 12, s. 10.

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.

1984, c. 25, s. 28.

### *Normal Value and Export Price*

Normal value and export price where information not available

**29.** (1) Where, in the opinion of the Commissioner, 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.

R.S., 1985, c. S -15, s. 29; 1999, c. 17, s. 183.

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 or section 29 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.

R.S., 1985, c. S -15, s. 30; 1999, c. 12, s. 11.

### *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 (2)(a), the margin of dumping in relation to goods of a particular country is the weighted average of the margins of dumping determined in accordance with section 30.2.

1994, c. 47, s. 159; 1999, c. 12, s. 12.

Margin of dumping re goods of an exporter

**30.2** (1) Subject to subsection (2), the margin of dumping in relation to any goods of 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.

If variation in price

(2) The Commissioner may determine the margin of dumping in relation to any goods of a particular exporter to be the weighted average of the margins of dumping in relation to the goods of that exporter that are sold in any individual sales of goods of that exporter that the Commissioner considers relevant if, in the opinion of the Commissioner, there are significant variations in the prices of goods of that exporter among purchasers, regions in Canada or time periods.

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.

1994, c. 47, s. 159; 1999, c. 12, s. 13(E), c. 17, ss. 183, 184.

Margin of dumping based on sample

**30.3** (1) The Commissioner may, if the Commissioner 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 of each of the countries whose goods are under consideration that, in the opinion of the Commissioner, can reasonably be investigated; or
- (b) samples of the goods of each of the countries whose goods are under consideration that, in the opinion of the Commissioner based on the information available at the time of selection, are statistically valid.

Where information submitted

(2) Where subsection (1) applies, the Commissioner 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 Commissioner, 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.



1994, c. 47, s. 159; 1999, c. 12, s. 14, c. 17, ss. 183, 184.

*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 Commissioner, 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.

1994, c. 47, s. 159; 1999, c. 17, s. 183.

PROCEDURE IN DUMPING AND SUBSIDY INVESTIGATIONS

*Commencement of Investigation*

Initiation of investigation

**31.** (1) The Commissioner 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 Commissioner's own initiative or, subject to subsection (2), where the Commissioner receives a written complaint respecting the dumping or subsidizing of the goods, within thirty days after the date on which written notice is given by or on behalf of the Commissioner to the complainant that the complaint is properly documented, if the Commissioner 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

- (a) the complaint is supported by domestic producers whose production represents more than fifty per cent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and

- (b) the production of the domestic producers who support the complaint represents twenty-five per cent or more of the total production of like goods by the domestic industry.

Meaning of "domestic producers"

(2.1) For the purpose of paragraph (2)(a), if a domestic producer is an importer of, or is related to an exporter or importer of, allegedly dumped or subsidized goods, "domestic producers" may, subject to subsection 2(1.1), be interpreted as meaning the rest of those domestic producers.

Meaning of "domestic industry"

(3) In paragraph (2)(b), domestic industry means, subject to subsection 2(1.1), the domestic producers as a whole of the like goods except that, if 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 subsections (2.1) and (3), a domestic producer is related to an exporter or importer if

- (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 thirty day period

(6) The period of thirty days referred to in subsection (1) is extended to forty-five days where, before the expiration of the thirty days, the Commissioner causes written notice to be given to the complainant and to the government of the country of export that the period of thirty 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 Commissioner 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

(8) 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 Commissioner shall initiate an investigation respecting the dumping or subsidizing of the goods forthwith after receipt of the advice.

R.S., 1985, c. S -15, s. 31; 1994, c. 47, s. 160; 1999, c. 12, s. 15, c. 17, s. 183.

No investigation where subsidy notified

**31.1** (1) Subject to subsections (2) and (3), the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner shall without delay notify the Deputy Minister of Finance and the complainant if the Commissioner 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).

1994, c. 47, s. 161; 1999, c. 17, ss. 181, 183.

Where Commissioner receives a complaint

**32.** (1) Where the Commissioner receives a written complaint respecting the dumping or subsidizing of goods, he shall, within twenty-one 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 Commissioner 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 Commissioner 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) If a written complaint filed with the Tribunal under subsection 23(1) of the *Canadian International Trade Tribunal Act* is referred to the Commissioner under subsection 26(4) or 28(1) of that Act, the Commissioner is deemed to have received a written complaint described in subsection (1).

R.S., 1985, c. S-15, s. 32; R.S., 1985, c. 47 (4th Supp.), s. 52; 1994, c. 47, s. 162; 1999, c. 12, s. 16, c. 17, ss. 183, 184.

Where Commissioner decides not to initiate investigation

**33.** (1) Where, after receipt of a properly documented complaint respecting the dumping or subsidizing of goods, the Commissioner decides, with respect to some or all of the goods specified in the complaint, not to cause an investigation to be initiated, the Commissioner 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 Commissioner 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 Commissioner the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods in respect of which the Commissioner has so decided has caused injury or retardation or is threatening to cause injury,

- (a) the Commissioner 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 Commissioner has so decided has caused injury or retardation or is threatening to cause injury.

R.S., 1985, c. S-15, s. 33; 1994, c. 47, s. 163; 1999, c. 17, s. 183.

## Notice of investigation

**34.** (1) If the Commissioner causes an investigation to be initiated respecting the dumping or subsidizing of goods, the Commissioner shall

- (a) in the case of an investigation initiated under any provision of this Act other than section 7, cause notice of the investigation
  - (i) to be given to the Secretary, the exporter, the importer, the government of the country of export, the complainant, if any, and any other prescribed persons, and
  - (ii) to be published in the *Canada Gazette*; and
- (b) without delay provide the Tribunal with the information and material with respect to the matter that is required under the Tribunal's rules.

## Tribunal to make preliminary inquiry

(2) The Tribunal shall, without delay after receipt by the Secretary under subparagraph (1)(a)(i) of a notice of an initiation of an investigation, make a preliminary inquiry (which need not include an oral hearing) into whether 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.

R.S., 1985, c. S-15, s. 34; 1994, c. 47, s. 164; 1999, c. 12, s. 17, c. 17, ss. 183, 184.

## Termination of investigation or inquiry

**35.** (1) The Commissioner shall act under subsection (2) and the Tribunal shall act under subsection (3) if, at any time before the Commissioner makes a preliminary determination under subsection 38(1) in respect of goods of a country or countries,

- (a) the Commissioner 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 of that country or of any of those countries is insignificant, or
  - (iii) the actual and potential volume of dumped or subsidized goods is negligible;
- or
- (b) the Tribunal 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.

Duty of Commissioner

- (2) The Commissioner shall
  - (a) cause the investigation to be terminated with respect to the goods in respect of which the Commissioner is so satisfied or the Tribunal has come to that conclusion; and
  - (b) cause notice of the termination to be
    - (i) given to the Secretary, the exporter, the importer, the government of the country of export, the complainant, if any, and any prescribed persons, and
    - (ii) published in the *Canada Gazette*.

Duty of Tribunal

- (3) The Tribunal shall
  - (a) cause the preliminary inquiry to be terminated with respect to the goods in respect of which the Commissioner is so satisfied or the Tribunal has come to that conclusion; and
  - (b) cause notice of the termination to be
    - (i) given to the Commissioner, the exporter, the importer, the government of the country of export, the complainant, if any, and any prescribed persons, and
    - (ii) published in the *Canada Gazette*.

R.S., 1985, c. S -15, s. 35; 1994, c. 47, s. 165; 1999, c. 12, s. 17, c. 17, ss. 183, 184.

Termination of investigation – Chile

**35.1** (1) Immediately after goods of Chile are exempted from the application of this Act in respect of dumping by regulations made under section 14,

- (a) the Commissioner shall cause any investigation initiated under section 31 to be terminated to the extent that it relates to the dumping of those goods;
- (b) the Tribunal shall cause any preliminary inquiry initiated under subsection 34(2) to be terminated to the extent that it relates to the dumping of those goods; and

- (c) all related proceedings are terminated to the extent that they relate to the dumping of those goods.

Notice of termination

(2) The Commissioner or the Tribunal, as the case may be, shall cause notice of the termination

- (a) to be given to the exporter, the importer, the Government of the Republic of Chile, the complainant, if any, and any other persons who may be prescribed; and

- (b) to be published in the *Canada Gazette*.

1997, c. 14, s. 90; 1999, c. 12, s. 18, c. 17, ss. 183, 184.

**36.** [Repealed, 1999, c. 12, s. 19]

Tribunal to give advice

**37.** If a reference is made to the Tribunal under section 33 on any question in relation to any matter before the Commissioner,

- (a) the Commissioner 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 Commissioner 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 thirty days after that date.

R.S., 1985, c. S -15, s. 37; 1999, c. 12, s. 20, c. 17, ss. 183, 184.

*Preliminary Determination of Injury or of Dumping or Subsidizing*

Preliminary determination of injury

**37.1** (1) On or before the sixtieth day after the initiation of an investigation under section 31, the Tribunal shall make, with respect to the goods in respect of which the investigation has not been terminated under section 35, a preliminary determination 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.

Notification

- (2) The Tribunal shall cause notice of the preliminary determination to be

- (a) given to the Commissioner, the exporter, the importer, the government of the country of export, the complainant, if any, and any prescribed persons; and
- (b) published in the *Canada Gazette*.

1999, c. 12, s. 21, c. 17, s. 184.

Preliminary determination of dumping or subsidizing

**38.** (1) Subject to section 39, after the sixtieth and on or before the ninetieth day after the initiation of an investigation under section 31, the Commissioner shall make a preliminary determination of dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated under section 35 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 the Commissioner believes, on the information available to the Commissioner at the time the Commissioner makes the estimate referred to in subparagraph (a)(i) or (b)(i), as the case may be, is the importer in Canada of the goods.

Exception

(2) The Commissioner shall not specify or estimate anything pursuant to subparagraph (1)(b)(iii) where the Commissioner 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 Commissioner makes a preliminary determination under subsection (1), the Commissioner 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.

R.S., 1985, c. S -15, s. 38; 1994, c. 47, ss. 166, 185; 1999, c. 12, s. 22, c. 17, ss. 183, 184.

Time extended

**39.** (1) If, in any investigation respecting the dumping or subsidizing of goods, the Commissioner, before the expiration of the ninety 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 Commissioner, makes it unusually difficult for him to decide within those ninety 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 ninety days referred to in section 38 is thereupon extended to one hundred and thirty-five days.

Notice of time extension

(2) Where the Commissioner 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.

R.S., 1985, c. S -15, s. 39; 1994, c. 47, s. 186; 1999, c. 12, s. 23, c. 17, ss. 183, 184.

**40.** [Repealed, 1999, c. 12, s. 24]

### *Final Determination*

Final determination or termination

**41.** (1) Within ninety days after making a preliminary determination under subsection 38(1) in respect of goods of a country or countries, the Commissioner shall

- (a) if, on the available evidence, the Commissioner is satisfied, in relation to the goods of that country or countries in respect of which the investigation is made, that
  - (i) the goods have been dumped or subsidized, and
  - (ii) the margin of dumping of, or the amount of subsidy on, the goods of that country or of any of those countries is not insignificant,

make a final determination of dumping or subsidizing with respect to the goods after specifying, in relation to each exporter of goods of 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 Commissioner is satisfied in accordance with that paragraph, cause the investigation to be terminated with respect to the goods.

Exception

(2) The Commissioner shall not specify anything under clause (1)(a)(iv)(C) if the Commissioner 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, 1994.

Notice of final determination

- (3) Where the Commissioner 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 Commissioner 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 Commissioner on an application under section 96.1, the Commissioner 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 Commissioner under subsection 77.015(3) or (4) or 77.019(5), or under subsection 77.15(3) or (4) or 77.19(4), the Commissioner 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 Commissioner 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 Commissioner is required by that section to take shall, notwithstanding anything therein, be taken by the Commissioner 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 ninety days after the Court gives its ruling, if it did not specify a period.

Decision to terminate

(4) Where the Commissioner reconsiders a matter involving a decision pursuant to subsection (1) or reconsiders and rescinds a decision pursuant to subsection (2),

- (a) the Commissioner shall be deemed to have made, on the day on which the order referring the matter or decision back to the Commissioner 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 Commissioner 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 one hundred and

twenty days after the day on which the order referring the decision back to the Commissioner was made.

1988, c. 65, s. 31; 1993, c. 44, s. 208; 1994, c. 47, s. 186; 1999, c. 17, s. 183.

Commissioner to be guided by Canada's obligations

**41.2** The Commissioner 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.

1994, c. 47, s. 168; 1999, c. 17, s. 183.

## 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 shall 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 the Tribunal is satisfied that

- (a) the margin of dumping or the amount of 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.

Termination of inquiry if volume is negligible

(4.1) If the Tribunal determines that the volume of dumped or subsidized goods from a country is negligible, the Tribunal shall terminate its inquiry in respect of those goods.

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.

Volume of dumped or subsidized goods

(6) For the purposes of this section, the volume of dumped or subsidized goods from a country is deemed to include the volume of goods of the country that are of the same description and are the subject of a sale for export to Canada.

R.S., 1985, c. S-15, s. 42; 1994, c. 47, s. 169; 1999, c. 12, ss. 26, 52(E).

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 one hundred and twenty 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 Commissioner, 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 fifteen 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*.

R.S., 1985, c. S -15, s. 43; 1988, c. 65, s. 32; 1993, c. 44, s. 209; 1999, c. 17, s. 183.

## Recommencement of inquiry

**44.** (1) Where pursuant to an application for judicial review under the *Federal Courts 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 thirty 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 one hundred and twenty 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 without delay give notice of the recommencement of the inquiry with respect to those goods to every person to whom the Secretary forwarded, under subsection 43(2), a copy of the order or finding with respect to which the application under the *Federal Courts 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.

R.S., 1985, c. S -15, s. 44; 1988, c. 65, s. 33; 1990, c. 8, s. 71; 2002, c. 8, ss. 170(E), 182.

Initiation of inquiry if imposition of duty not in public interest

**45.** (1) If, 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, the Tribunal shall, on its own initiative or on the request of an interested person that is made within the prescribed period and in the prescribed manner, initiate a public interest inquiry if the Tribunal is of the opinion that there are reasonable grounds to consider 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.

Publication of notice

(2) The Secretary shall publish in the *Canada Gazette* notice of a decision to initiate a public interest inquiry.

Consideration of prescribed factors

(3) In a public interest inquiry, the Tribunal shall take into account any factors, including prescribed factors, that it considers relevant.

Report

(4) If, as a result of a public interest inquiry, 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 sections 3 to 6, in respect of the goods would not or might not be in the public interest, the Tribunal shall without delay

- (a) report to the Minister of Finance that it is of that opinion and provide that Minister with a statement of the facts and reasons that caused it to be of that opinion; and
- (b) cause notice of the report to be published in the *Canada Gazette*.

Details in report

(5) If the Tribunal is of the opinion that the imposition of an anti-dumping or countervailing duty in the full amount would not or might not be in the public interest, the Tribunal shall, in the report referred to in paragraph (4)(a), specify either

- (a) a level of reduction in the anti-dumping or countervailing duty provided for in any of sections 3 to 6; or



- (b) a price or prices that are adequate to eliminate injury, retardation or the threat of injury to the domestic industry.

Persons interested may make representations

(6) If a person interested in a public interest inquiry makes a request to the Tribunal within the prescribed period and in the prescribed manner for an opportunity to make representations to the Tribunal on the question whether the Tribunal should make a report under paragraph (4)(a) with respect to any goods in respect of which the inquiry is being made, the Tribunal shall give 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.

R.S., 1985, c. S -15, s. 45; 1999, c. 12, s. 27.

Tribunal to advise Commissioner

**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 Commissioner.

R.S., 1985, c. S -15, s. 46; 1994, c. 47, s. 170; 1999, c. 17, s. 183.

Termination of proceedings

**47.** (1) 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, other than proceedings under Part I.1 or II or subsection 76.02(1) or (3).

Termination of inquiry – Chile

(2) If goods of Chile are exempted from the application of this Act by regulations made under section 14, the Tribunal shall issue an order terminating any inquiry referred to in section 42 to the extent that it relates to the dumping of those goods.

Notice of termination

- (3) The Secretary shall
- (a) send, immediately after an inquiry is terminated under subsection (2), notice of the termination to the Commissioner, the importer, the exporter, the Government of the Republic of Chile and any other persons who are specified by the rules of the Tribunal; and

- (b) cause a notice of the termination to be published in the *Canada Gazette*.

R.S., 1985, c. S-15, s. 47; 1988, c. 65, s. 34; 1993, c. 44, s. 210; 1997, c. 14, s. 91; 1999, c. 12, s. 28, c. 17, s. 183.

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

## UNDERTAKINGS

### Acceptance of undertaking

49. (1) Subject to subsection (2), the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner to complete the investigation; and
- (b) a request must be made to the Tribunal to complete its inquiry.

Time for offering undertaking

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

Consideration of representations

(5) In considering whether to accept an undertaking, the Commissioner shall consider any representations received from the importer, exporter, government of the country of export or any other interested person.

R.S., 1985, c. S -15, s. 49; 1994, c. 47, ss. 171, 185(E); 1999, c. 12, s. 29, c. 17, ss. 183, 184.

Procedure where undertaking accepted

**50.** Forthwith after the Commissioner accepts, in an investigation by the Commissioner under section 31, an undertaking or undertakings with respect to dumped or subsidized goods,

- (a) the Commissioner 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.

R.S., 1985, c. S -15, s. 50; 1994, c. 47, s. 172; 1999, c. 17, s. 183.

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.

1994, c. 47, s. 172.

Commissioner to terminate undertaking

**51.** (1) The Commissioner shall forthwith terminate an undertaking in respect of which the Commissioner receives, within thirty 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.

Commissioner to resume investigation

(2) Where the Commissioner 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).

R.S., 1985, c. S-15, s. 51; 1994, c. 47, ss. 173, 186; 1999, c. 17, s. 183.

Acceptance of further undertakings

**51.1** If an investigation has been suspended under subparagraph 50(a)(iii), the Commissioner may accept an undertaking in respect of dumped or subsidized goods from an exporter or government that had not previously offered an undertaking in respect of the goods that was accepted by the Commissioner under subsection 49(1) if the Commissioner is of the opinion that observance of the undertaking will not cause

- (a) if the undertaking is given by an exporter, the price at which the goods are sold to importers in Canada by the exporter to increase by more than the estimated margin of dumping of the goods or the estimated amount of subsidy on the goods; or

- (b) if 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 amount of subsidy on the goods.

1999, c. 12, s. 30, c. 17, s. 184.

Termination of undertakings by Commissioner

**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 Commissioner

- (a) is satisfied that the undertaking or any of the undertakings has been or is being violated,
- (b) is satisfied that the undertaking or undertakings would not have been accepted if the information available at that time had been available when the undertaking was accepted, or
- (c) is satisfied that the undertaking or undertakings would not have been accepted if the circumstances prevailing at that time had prevailed when the undertaking was accepted,

the Commissioner 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 Commissioner 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, or
- (ii) the margin of dumping of, or the amount of subsidy on, the goods is insignificant,
- (iii) [Repealed, 1999, c. 12, s. 31]
- (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 paragraph 76.01(5)(a), subsection 76.02(4), paragraph 76.03(12)(a) or subsection 76.04(1) or 76.1(2), rescinded an order or

finding with respect to the goods or the order or finding has been deemed to be rescinded under subsection 76.03(1),

the Commissioner 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 if conditions no longer exist

(1.2) Unless 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 paragraph 76.01(5)(a), subsection 76.02(4), paragraph 76.03(12)(a) or subsection 76.04(1) or 76.1(2) or has not been deemed to be rescinded under subsection 76.03(1), the Commissioner shall terminate the undertaking or undertakings if, at any time after accepting the undertaking or undertakings, the Commissioner 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 Commissioner has accepted two or more undertakings, the Commissioner, 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 Commissioner under section 49 and any one or more of those undertakings have been or are being violated, the Commissioner 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.

R.S., 1985, c. S-15, s. 52; 1994, c. 47, s. 174; 1999, c. 12, ss. 31, 52(E), c. 17, ss. 183, 184.

Review and renewal of undertaking by Commissioner

**53.** (1) Unless 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 paragraph 76.01(5)(a), subsection 76.02(4), paragraph 76.03(12)(a) or subsection 76.04(1) or 76.1(2) or has not been deemed to be rescinded under subsection 76.03(1), the Commissioner shall review the undertaking before the expiry of five years after the date on which it was accepted and before the expiry of each subsequent period, if any, for which it is renewed under this section and if, on the review, the Commissioner is satisfied

- (a) that the undertaking continues to serve the purpose for which it was intended, and
- (b) that the Commissioner is not required to terminate it under section 52,

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

## Expiry of undertaking

(2) An undertaking expires immediately after the Commissioner decides under subsection (1) not to renew it.

## 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 Commissioner has accepted two or more undertakings, the Commissioner, for good reason, otherwise directs.

## Notice

(4) Where an undertaking is renewed or not renewed pursuant to subsection (1), the Commissioner 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.

R.S., 1985, c. S-15, s. 53; 1988, c. 65, s. 35; 1994, c. 47, ss. 175, 186; 1999, c. 12, s. 32, c. 17, ss. 183, 184.

## 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 Commissioner on an application under section 96.1,

- (a) the Commissioner 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 Commissioner 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 Commissioner 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).

1988, c. 65, s. 36; 1993, c. 44, s. 211; 1994, c. 47, s. 186; 1999, c. 17, s. 183.

Amendment of undertaking

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

1984, c. 25, s. 54.

#### DETERMINATIONS BY DESIGNATED OFFICER

Determination by designated officer

**55.** (1) Where the Commissioner

- (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 Commissioner 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).



R.S., 1985, c. S-15, s. 55; R.S., 1985, c. 1 (2nd Supp.), s. 202; 1994, c. 47, ss. 176, 185; 1999, c. 17, s. 183.

## RE-DETERMINATIONS AND APPEALS

### *Re-determination by Designated Officer or Commissioner*

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 thirty 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 ninety 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 ninety 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.

R.S., 1985, c. S-15, s. 56; R.S., 1985, c. 1 (2nd Supp.), s. 203; 1988, c. 65, s. 37; 1993, c. 44, s. 212; 1999, c. 17, s. 183.

Review by designated officer

**57.** Unless the Commissioner has previously re-determined under section 59 a determination referred to in subsection 56(1) or (2) or the determination was made in respect of goods released after the initiation of an expedited review under subsection 13.2(3) and before a decision was issued under that subsection, a designated officer may re-determine the determination

- (a) in accordance with a request made under subsection 56(1.01) or (1.1); or
- (b) if the designated officer deems it advisable, within two years after the determination.

R.S., 1985, c. S-15, s. 57; R.S., 1985, c. 1 (2nd Supp.), s. 204; 1988, c. 65, s. 38; 1993, c. 44, s. 213; 1999, c. 12, s. 33, c. 17, ss. 183, 184.

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 ninety 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 Commissioner for a re-determination, if the importer has paid all duties owing on the goods; and

- (b) here 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) here 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 ninety 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 Commissioner 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.

R.S., 1985, c. S-15, s. 58; R.S., 1985, c. 1 (2nd Supp.), s. 205; 1988, c. 65, s. 39; 1993, c. 44, s. 214; 1999, c. 17, s. 183.

Permissive re-determination

**59.** (1) Subject to subsection (3), the Commissioner may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section 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 or 28 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 of Appeal or the Supreme Court of Canada with respect to the goods; and
- (e) in any case where the Commissioner 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

Commissioner 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).

Re-determination of re-determination

- (1.1) The Commissioner may re-determine any re-determination
- (a) at any time after a re-determination was made under any of paragraphs (1)(a) to (c) and (e) but before an appeal under section 61 is heard, on the recommendation of the Attorney General of Canada, if the re-determination would reduce duties payable on the goods; and
  - (b) at any time if the re-determination would be consistent with a decision of the Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, or with a re-determination under paragraph (a), made in respect of other like goods of the same importer or owner imported on or before the date of importation of the goods in respect of which the re-determination is being made.

Permissive re-determination

(2) The Commissioner may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section 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 Commissioner 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 Commissioner 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 ten 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 Commissioner 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 ten days after the day on which it was mailed.

R.S., 1985, c. S-15, s. 59; R.S., 1985, c. 1 (2nd Supp.), s. 206, c. 47 (4th Supp.), s. 52; 1988, c. 65, s. 40; 1993, c. 44, s. 215; 1999, c. 12, s. 34, c. 17, ss. 183, 184; 2002, c. 8, s. 171.

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, or duty and interest paid (other than interest that was paid because duties were not paid when required by subsection 32(5) or section 33 of the *Customs Act*), in excess of the duties owing 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 Commissioner

(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 Commissioner 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).

R.S., 1985, c. S-15, s. 60; 1994, c. 47, ss. 177, 185; 1999, c. 17, s. 183; 2001, c. 25, s. 96.

Notice to be given

**60.1** If a determination or a re-determination has been made under section 55, subsection 56(1) or section 57 or 59, notice of the determination or re-determination shall be given without delay to the importer in Canada.  
2001, c. 25, s. 97.

### *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 Commissioner 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 Commissioner 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) must be published in the *Canada Gazette* at least twenty-one days before the day of the hearing, and any person who enters an appearance with the Secretary at least seven days before the day of the hearing 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.

R.S., 1985, c. S-15, s. 61; R.S., 1985, c. 47 (4th Supp.), s. 52; 1993, c. 44, s. 216; 1999, c. 12, s. 35, c. 17, s. 183.

### *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 Commissioner, 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 ninety 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.

R.S., 1985, c. S-15, s. 62; R.S., 1985, c. 47 (4th Supp.), s. 52; 1990, c. 8, s. 72; 1999, c. 17, s. 183.

**62.1** [Repealed, 2001, c. 25, s. 98]

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

### *Review of Orders and Findings*

#### Judicial Review

Application for judicial review

**76.** 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 Courts Act*.

R.S., 1985, c. S-15, s. 76; R.S., 1985, c. 47 (4th Supp.), s. 52; 1988, c. 65, s. 41; 1993, c. 44, s. 217; 1999, c. 12, s. 36, c. 17, s. 183; 2002, c. 8, s. 182.

#### Review of Orders and Findings by Tribunal

Interim review of orders by Tribunal

**76.01** (1) 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 Minister of Finance, the Commissioner or any other person or of any government, conduct an interim review of

- (a) the order or finding; or
- (b) any aspect of the order or finding.

Tribunal may re-hear any matter

(2) In conducting an interim review, the Tribunal may re-hear any matter before deciding it.

Limitation

(3) The Tribunal shall not conduct an interim review at the request of any person or government unless the person or government satisfies the Tribunal that the review is warranted.

Order if interim review not initiated

(4) If the Tribunal decides not to conduct an interim review at the request of a person or government, the Tribunal shall make an order to that effect and give reasons for it, and the Secretary shall forward a copy of the order and the reasons to that person or government and cause notice of the order to be published in the *Canada Gazette*.

Orders on completion of interim review

- (5) The Tribunal, on completion of an interim review
- (a) under paragraph (1)(a), shall make an order rescinding the order or finding or continuing it with or without amendment, as the circumstances require, and shall give reasons for making the order; and
  - (b) under paragraph (1)(b), shall make any order in respect of the order or finding as the circumstances require, and shall give reasons for making the order.

Completion of review

- (6) On completion of an interim review, the Secretary shall
- (a) forward to the Commissioner and any other persons and governments that are specified by the rules of the Tribunal,
    - (i) without delay after the review is completed, a copy of the order, and
    - (ii) not later than fifteen days after the date of the order, a copy of the reasons for the order; and
  - (b) cause notice of the order to be published in the *Canada Gazette*.

Expiry of order

- (7) An order made on the completion of an interim review, other than an order rescinding an order or finding, expires
- (a) if an expiry review is not initiated under subsection 76.03(3), five years after the day on which the order or finding that was the subject of the interim review was made; and
  - (b) if an expiry review is initiated under subsection 76.03(3), the day on which the Tribunal makes an order under subsection 76.03(12).



## Review on Referral Back

Review of orders by Tribunal on referral back and re-hearing

**76.02** (1) If the Tribunal receives notice of action taken under 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 Minister of Finance, the Commissioner or any other person or of any government, review the order or finding and, in conducting the review, may re-hear any matter before deciding it.

Limitation

(2) The Tribunal shall not conduct a review at the request of any person or government unless the person or government satisfies the Tribunal that a review is warranted.

Review of orders by Tribunal on referral back and re-hearing

(3) If an order or finding of the Tribunal is referred back to the Tribunal under subsection 77.015(3) or (4), 77.019(5), 77.15(3) or (4) or 77.19(4), the Tribunal shall review the order or finding and, in conducting the review, may re-hear any matter before deciding it.

Completion of review

(4) On completion of a review, the Tribunal shall confirm the order or finding or rescind it and make any 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, if it makes another order or finding, shall declare to what goods, including, if applicable, from what supplier and from what country of export, the order or finding applies.

Notice

- (5) On completion of a review, the Secretary shall
- (a) forward to the Commissioner and the other persons and governments that are specified by the rules of the Tribunal and, in the case of a review under subsection (3), the Canadian Secretary,
- (i) without delay after the review is completed, a copy of the order or finding made under subsection (4), and
- (ii) not later than fifteen 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*.

## Expiry Review

Order or finding deemed to be rescinded

**76.03** (1) If the Tribunal has not initiated an expiry review under subsection (3) with respect to an order or finding described in any of sections 3 to 6 before the expiry of five years after whichever of the following days is applicable, the order or finding is deemed to have been rescinded as of the expiry of the five years:

- (a) if no order continuing the order or finding has been made under paragraph (12)(b), the day on which the order or finding was made; and
- (b) if one or more orders continuing the order or finding have been made under paragraph (12)(b), the day on which the last order was made.

Publication of notice

(2) If an order or finding is to be deemed rescinded under subsection (1), the Secretary shall, not later than ten months before the expiry date of the order or finding under that subsection, cause to be published in the *Canada Gazette* a notice of expiry setting out the information specified in the rules of the Tribunal.

Review of orders by Tribunal

(3) The Tribunal may initiate an expiry review of an order or finding described in any of sections 3 to 6

- (a) on its own initiative; or
- (b) at the request of the Minister of Finance, the Commissioner or any other person or of any government, if the request is made within the period specified in the notice of expiry.

Limitation

(4) The Tribunal shall not initiate an expiry review at the request of any person or government unless the person or government satisfies the Tribunal that a review is warranted.

Order of refusal

(5) If the Tribunal decides not to initiate an expiry review at the request of a person or government, the Tribunal shall make an order to that effect and give reasons for it, and the Secretary shall forward a copy of the order and the reasons to that person or government and cause notice of the order to be published in the *Canada Gazette*.

Notice

- (6) If the Tribunal decides to initiate an expiry review, the Secretary shall without delay
  - (a) cause notice of the Tribunal's decision to be given to
    - (i) the Commissioner, and
    - (ii) all other persons and governments specified in the rules of the Tribunal;

- (b) provide the Commissioner with a copy of the administrative record on which it based its decision to initiate a review under subsection (3); and
- (c) cause to be published in the *Canada Gazette* notice of initiation of the review that includes the information set out in the rules of the Tribunal.

If review initiated

- (7) If the Tribunal decides to initiate an expiry review, the Commissioner shall
  - (a) within one hundred and twenty days after receiving notice under subparagraph (6)(a)(i), determine whether the expiry of the order or finding in respect of goods of a country or countries is likely to result in the continuation or resumption of dumping or subsidizing of the goods; and
  - (b) provide the Secretary with notice of the determination without delay after making it.

Consequences of Commissioner's determination

(8) If the Commissioner determines that the expiry of the order or finding in respect of any goods is unlikely to result in a continuation or resumption of dumping or subsidizing, the Tribunal shall not take those goods into account in assessing the cumulative effect of dumping or subsidizing under subsection (11).

Consequences of Commissioner's determination

(9) If the Commissioner determines that the expiry of the order or finding in respect of any goods is likely to result in a continuation or resumption of dumping or subsidizing, the Commissioner shall without delay provide the Tribunal with any information and material with respect to the matter that is required under the rules of the Tribunal.

Tribunal's determination

(10) If the Commissioner makes a determination described in subsection (9), the Tribunal shall determine whether the expiry of the order or finding in respect of the goods referred to in that subsection is likely to result in injury or retardation.

Assessment of cumulative effect

(11) For the purpose of subsection (10), the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the determination of the Commissioner described in subsection (9) applies that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the order or finding applies that are imported into Canada from any of those countries and

- (a) goods to which the order or finding applies that are imported into Canada from any other of those countries; or
- (b) like goods of domestic producers.

Order of Tribunal

- (12) The Tribunal shall make an order
- (a) rescinding the order or finding in respect of goods
- (i) referred to in subsection (8), or
- (ii) in respect of which it determines that the expiry of the order or finding is unlikely to result in injury or retardation; or
- (b) continuing the order or finding, with or without amendment, in respect of goods which it determines that the expiry of the order or finding is likely to result in injury or retardation.

1999, c. 12, s. 36, c. 17, s. 184.

Separate order or finding

**76.04** (1) If a review under section 76.01, 76.02 or 76.03 involves goods of more than one NAFTA country, or of one or more NAFTA countries and goods of one or more other countries, and the Tribunal makes another order or finding under any of those sections, the Tribunal shall make a separate order or finding under that section with respect to the goods of each NAFTA country.

Suspension of subsection (3)

(2) The operation of subsection (3) is suspended during the period in which subsection (1) is in force.

Separate order or finding

(3) If a review under section 76.01, 76.02 or 76.03 involves goods of the United States as well as goods of other countries and the Tribunal makes another order or finding under any of those sections, the Tribunal shall make a separate order or finding under that section with respect to the goods of the United States.

1999, c. 12, s. 36.

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 Commissioner review any decision, determination or re-determination or any portion of a decision, determination or re-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 Commissioner or the Tribunal, as the case may be, shall

- (a) continue the decision, determination, re-determination, order or finding without amendment;
- (b) continue the decision, determination, re-determination, order or finding with any amendments that the Commissioner or the Tribunal, as the case may be, considers necessary; or
- (c) rescind the decision, determination, re-determination, order or finding and make any other decision, determination, re-determination, order or finding that the Commissioner or the Tribunal, as the case may be, considers necessary.

## Reasons

(3) If a decision, determination, re-determination, order or finding is continued under paragraph (2)(a) or (b) or made under paragraph (2)(c), the Commissioner or the Tribunal, as the case may be, shall give reasons for doing so and shall set out to what goods, including, if practicable, the name of the supplier and the country of export, the decision, determination, re-determination, order or finding applies.

## Notification of Minister of Finance

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

## Deeming

(5) Any decision, determination or re-determination continued by the Commissioner under paragraph (2)(b) or made by the Commissioner under paragraph (2)(c) is deemed to have been made under

- (a) paragraph 41(1)(a), if the decision or determination was continued or made as a result of a review under this section of a final determination of the Commissioner under that paragraph;
- (b) paragraph 41(1)(b), if the decision or determination was continued or made as a result of a review under this section of a decision of the Commissioner under that paragraph to cause an investigation to be terminated;
- (c) subsection 53(1), if the decision or determination was continued or made as a result of a review under this section of a decision of the Commissioner under that subsection to renew or not to renew an undertaking; or
- (d) subsection 59(1), (1.1) or (2), if the re-determination was continued or made as a result of a review under this section of a re-determination by the Commissioner under either of those subsections.

*Rescission of Orders and Findings*

Goods of Chile

**77.** If the Tribunal has made an order or finding resulting in the levying of anti-dumping duties in respect of goods of Chile that are subsequently exempted from the application of this Act by regulations made under section 14, the Tribunal shall rescind the order or finding to the extent that it relates to the dumping of those goods.

R.S., 1985, c. S-15, s. 77; R.S., 1985, c. 47 (4th Supp.), s. 52; 1997, c. 14, s. 92.

**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 Commissioner 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 finales* »

"definitive decision" means

- (a) a final determination of the Commissioner under paragraph 41(1)(a),
- (b) a decision of the Commissioner 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 Commissioner under subsection 53(1) to renew or not to renew an undertaking,
- (e) a re-determination of the Commissioner under subsection 59(1),
- (f) a re-determination of the Commissioner under subsection 59(3),
- (f.1) a re-determination of the Commissioner under subsection 59(1.1),
- (g) an order of the Tribunal under subsection 76.01(4) or 76.03(5),

- (h) an order of the Tribunal under subsection 76.01(5) or 76.03(12),
- (i) an order or finding of the Tribunal under subsection 76.02(4) respecting a review under subsection 76.02(1),
- (i.1) an order or finding of the Tribunal under paragraph 76.1(2)(b) or (c), or
- (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 Appeal 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 spécial* »

"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 Courts Act*, the provisions of this Part prevail to the extent of the inconsistency.

1993, c. 44, s. 218; 1994, c. 47, s. 180; 1999, c. 12, s. 38, c. 17, ss. 183, 184; 2002, c. 8, ss. 172, 182.

### *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 Courts 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 Commissioner under subsection 59(1) or (3), within thirty 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 Courts 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 Courts Act* or section 96.1 of this Act or appeal under section 61 of this Act in respect of the decision.

1993, c. 44, s. 218; 1999, c. 17, s. 183; 2002, c. 8, s. 182.

Applications and appeals

**77.012** (1) No person or government may apply under the *Federal Courts 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 expiry of the period of thirty days after
  - (i) the day on which the definitive decision is published in the *Canada Gazette*,or
  - (ii) in the case of a re-determination of the Commissioner under subsection 59(1), (1.1) or (3), the day on which notice of the re-determination is received by the government of a NAFTA country; and



- (b) unless the person or government has, within twenty days after the day on which that 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 Courts 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 Courts Act* and subsection 96.1(3) of this Act is extended by ten days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences.

1993, c. 44, s. 218; 1999, c. 12, s. 39, c. 17, s. 184; 2002, c. 8, s. 182.

#### *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 Commissioner 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.

1993, c. 44, s. 218; 1999, c. 17, s. 183.

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.

1993, c. 44, s. 218.

### *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 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 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*.

1993, c. 44, s. 218.

### *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).  
1993, c. 44, s. 218.

*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.

1993, c. 44, s. 218.

## 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.

1993, c. 44, s. 218.

## 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*.

1993, c. 44, s. 218.

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 Courts Act* does not apply to a panel, committee or special committee.

1993, c. 44, s. 218; 2002, c. 8, s. 182.

### *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.

1993, c. 44, s. 218; 1999, c. 17, s. 183.

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.

1993, c. 44, s. 218.

#### *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.

1993, c. 44, s. 218.

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 one hundred and fifty days prior to the affirmative finding by the special committee.

1993, c. 44, s. 218.

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.

1993, c. 44, s. 218.

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.

1993, c. 44, s. 218.

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 Courts 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.

1993, c. 44, s. 218; 2002, c. 8, s. 182.

## 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 sixty days, but not later than ninety 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*.

1993, c. 44, s. 218.

## 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 sixty days, but in no case later than ninety 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.

1993, c. 44, s. 218.

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.

1993, c. 44, s. 218.

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 thirty 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 Courts 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 thirty 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 Courts 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 thirty 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 Courts 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 thirty 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 Courts 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.

1993, c. 44, s. 218; 2002, c. 8, s. 182.

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.

1993, c. 44, s. 218.

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 ninety 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.

1993, c. 44, s. 218.

*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 one hundred thousand 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.

1993, c. 44, s. 218.

*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.

1993, c. 44, s. 218.

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*.

1993, c. 44, s. 218.

#### *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.

1993, c. 44, s. 218.

Suspension of Part II

**77.038** The operation of Part II is suspended during the period in which this Part is in force.

1993, c. 44, s. 218.

## **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 Commissioner or the Tribunal, according to which made the decision;

"committee" «*comités*»

"committee" means an extraordinary challenge committee appointed pursuant to section 77.18;

"definitive decision" «*décisions finales*»

"definitive decision" means

- (a) a final determination of the Commissioner under paragraph 41(1)(a),
- (b) a decision of the Commissioner 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 Commissioner under subsection 53(1) to renew or not to renew an undertaking,
- (e) a re-determination of the Commissioner under subsection 59(1),
- (f) a re-determination of the Commissioner under subsection 59(3),
- (f.1) a re-determination of the Commissioner under subsection 59(1.1),
- (g) an order of the Tribunal under subsection 76.01(4) or 76.03(5),
- (h) an order of the Tribunal under subsection 76.01(5) or 76.03(12),
- (i) an order or finding of the Tribunal under subsection 76.02(4) respecting a review under subsection 76.02(1),
- (i.1) an order or finding of the Tribunal under paragraph 76.1(2)(b) or (c), or
- (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, re-determination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Appeal or the Supreme Court of Canada relating to those goods;

"Minister" «*ministre*»

"Minister" means the Minister for International Trade;

"panel" «*groupe spécial*»

"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 Courts Act*, the provisions of this Part prevail to the extent of the inconsistency.

1988, c. 65, s. 42; 1994, c. 47, s. 181; 1999, c. 12, s. 40, c. 17, ss. 183, 184; 2002, c. 8, ss. 173, 182.

#### *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 Courts 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 twenty-five 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 Commissioner 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 Courts 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 Courts Act* or section 96.1 of this Act or appeal under section 61 of this Act in respect of the decision.

1988, c. 65, s. 42; 1999, c. 17, s. 183; 2002, c. 8, s. 182.

Applications and appeals

**77.12** (1) No person or government may apply under section 18 or 28 of the *Federal Courts 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 expiry of the period of thirty days after
  - (i) the day on which the definitive decision is published in the *Canada Gazette*,  
or
  - (ii) in the case of a re-determination of the Commissioner under subsection 59(1), (1.1) or (3), the day on which notice of the re-determination is received by the United States; and
- (b) unless the person or government has, within twenty days after the day on which that 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 Courts 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 ten day limitation period referred to in subsection 28(2) of the *Federal Courts Act* and subsection 96.1(3) of this Act is extended by thirty days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences.

1988, c. 65, s. 42; 1999, c. 12, s. 41, c. 17, s. 184; 2002, c. 8, s. 182.

#### *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 Commissioner 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.

1988, c. 65, s. 42; 1999, c. 17, s. 183.

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.

1988, c. 65, s. 42.

### *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*.

1988, c. 65, s. 42.

*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).

1988, c. 65, s. 42.

*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.

1988, c. 65, s. 42.

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.

1988, c. 65, s. 42.

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*.

1988, c. 65, s. 42.

## 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 Courts Act* does not apply to a panel or committee.

1988, c. 65, s. 42; 2002, c. 8, s. 182.

### *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.

1988, c. 65, s. 42; 1999, c. 17, s. 183.

#### 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.

1988, c. 65, s. 42.

### *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.

1988, c. 65, s. 42.

#### 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.

1988, c. 65, s. 42.

## 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*.  
1988, c. 65, s. 42.

*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 one hundred thousand 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.

1988, c. 65, s. 42.

### *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.

1988, c. 65, s. 42.

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*.  
1988, c. 65, s. 42.

### *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.

1988, c. 65, s. 42.

### **PART III**

#### **GENERAL**

##### *Provision of Evidence to Commissioner*

Commissioner may require evidence to be provided

**78.** (1) Where,

(a) in any proceeding undertaken by the Commissioner after notice has been given that the complaint is properly documented but before the initiation of an investigation or 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 section 3, 5 or 6 applies and that will or may be imported into Canada,

the Commissioner believes on reasonable grounds that any person in Canada is able to provide evidence relevant to any proceedings undertaken by the Commissioner before the initiation of an investigation, 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 Commissioner may, by notice in writing, require the person to provide the Commissioner, 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner to require any person to provide evidence orally.

Extension of time

(5) Where, pursuant to paragraph (2)(b), the Commissioner specifies the time within which evidence is to be provided, the Commissioner may, either before or after the expiration of that time, extend the time within which the evidence is to be provided.

R.S., 1985, c. S -15, s. 78; 1999, c. 12, s. 42, c. 17, ss. 183, 184.

Designation of evidence as confidential

**79.** (1) Where a person who provides the Commissioner 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 Commissioner a statement designating evidence as confidential, together with the explanation referred to in that subsection, the person shall submit to the Commissioner, at the same time, a summary of the evidence designated as confidential in sufficient detail to convey a reasonable understanding of the evidence.

R.S., 1985, c. S -15, s. 79; 1999, c. 17, s. 183.

*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, if 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 under this Act, the Commissioner 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.

R.S., 1985, c. S -15, s. 81; R.S., 1985, c. 1 (2nd Supp.), s. 210; 1999, c. 12, s. 43, c. 17, s. 184.

### *Disclosure of Information*

Definition of "information"

**82.** In sections 83 to 87, "information" includes evidence.

1984, c. 25, s. 82.

Information to be disclosed

**83.** Where information is provided to the Commissioner 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.

R.S., 1985, c. S -15, s. 83; 1999, c. 17, s. 183.

Information to be disclosed

**83.1** Where information is provided to the Commissioner for the purposes of any proceedings under this Act in respect of goods of a NAFTA country, the Commissioner 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.

1993, c. 44, s. 219; 1999, c. 17, s. 183.

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 Commissioner, 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

- (2) Subsection (1) does not apply in respect of
  - (a) any summary of information or statement referred to in paragraph 85(1)(b) or any summary referred to in subsection 79(2); or
  - (b) the disclosure by the Commissioner of information for the purposes of proceedings before a panel or the Appellate Body established under the Understanding on Rules and Procedures Governing the Settlement of Disputes set out in Annex 2 to the WTO Agreement.

Disclosure to counsel

(3) Notwithstanding subsection (1), information to which that subsection applies that has been provided to the Commissioner in any proceedings under this Act shall, on written request and on payment of the prescribed fee, be disclosed by the Commissioner, in the manner and at the time specified by the Commissioner, to counsel for any party to those proceedings or to other proceedings under this Act arising out of those proceedings for use, notwithstanding any other Act or law, by that counsel only in those proceedings, subject to any conditions that the Commissioner considers reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who submitted it to the Commissioner, 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.

Limitation

(3.1) The Commissioner may not disclose information under subsection (3) if the Commissioner is satisfied that the disclosure might result in material harm to the business or affairs of the person who designated the information as confidential under paragraph 85(1)(a).

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.



R.S., 1985, c. S -15, s. 84; R.S., 1985, c. 47 (4th Supp.), s. 52; 1999, c. 12, s. 44, c. 17, ss. 183, 184.

Designation of information as confidential

**85.** (1) Where a person who provides information to the Commissioner 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 Commissioner 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 Commissioner is satisfied that the explanation given as justification for the making of the statement does not justify the making thereof.

R.S., 1985, c. S -15, s. 85; 1994, c. 47, s. 182; 1999, c. 17, s. 183.

Where there has been failure to comply

**86.** (1) Where a person has designated information as confidential pursuant to paragraph 85(1)(a) and the Commissioner considers that the designation is warranted, but the person has failed to comply with paragraph 85(1)(b), the Commissioner 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 Commissioner considers designation unwarranted

(2) Where, pursuant to paragraph 85(1)(a), a person has designated information as confidential and the Commissioner 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 Commissioner shall cause the person

(a) to be notified of the fact that the Commissioner considers the designation of that information as confidential unwarranted and of the Commissioner'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).

R.S., 1985, c. S -15, s. 86; 1999, c. 17, s. 183.

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 fifteen days after being so notified,

(a) withdraw the designation, or

(b) submit to the Commissioner an explanation or further explanation of why he designated the information as confidential,

and where the person does neither of those things within the fifteen days, that information shall not thereafter be taken into account by the Commissioner in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, unless the Commissioner obtains it elsewhere than from that person.

Commissioner to reconsider

(2) Where, pursuant to subsection (1), a person submits to the Commissioner, within the fifteen days referred to in that subsection, an explanation or further explanation of why the person designated information as confidential, the Commissioner shall again consider whether, taking into account that explanation or further explanation, the designation of the information as confidential is warranted and, if the Commissioner 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 Commissioner 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 Commissioner 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 fifteen days after being so informed or within such longer time not exceeding thirty days after being so informed as the Commissioner, either before or after the expiration of the fifteen 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 Commissioner shall cause the person to be notified that the information will not thereafter be taken into account by the Commissioner 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 Commissioner 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 Commissioner is prohibited by subsection (1) or (2) from taking into account in the proceedings for the purposes of which it was provided.

R.S., 1985, c. S -15, s. 87; 1999, c. 17, s. 183.

Application of sections 86 and 87

**88.** Sections 86 and 87 do not apply in respect of evidence submitted to the Commissioner pursuant to subsection 78(3).

R.S., 1985, c. S -15, s. 88; 1999, c. 17, s. 183.

Prohibition on disclosure of information

**88.1** If the Tribunal indicates to the Commissioner in writing that subsection 46(1) of the *Canadian International Trade Tribunal Act* applies to information provided to the Commissioner under paragraph 76.03(6)(b), no person employed in the public service of Canada who comes into possession of that information while they are so employed shall, either before or after they cease to be so employed, knowingly disclose it, 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.

1999, c. 12, s. 45, c. 17, s. 184.

#### *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 Commissioner 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 only of goods that have been imported into Canada,

- (a) a determination has been made under section 55 or 56 with respect to the goods; and
- (b) more than ninety days have elapsed since the determination referred to in paragraph (a) was made.

*Idem*

(2) Where the Commissioner makes a request under subsection (1) for a ruling on the question referred to therein, the Commissioner shall

- (a) state in the request which of the two or more persons the Commissioner 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 Commissioner considers will be useful to it in considering the question 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

(3) Where, in any investigation, the Commissioner 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.

R.S., 1985, c. S -15, s. 89; 1999, c. 12, s. 46, c. 17, s. 183.

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.

1984, c. 25, s. 90.

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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner is required by that section to take shall, notwithstanding anything therein, be taken by the Commissioner within sixty days after the Tribunal gives its ruling on the question;
- (f) where the Commissioner 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 Commissioner, 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 Commissioner 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 Commissioner 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 re-hear 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 ninety 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 ninety 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 Commissioner, 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 fifteen 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.

R.S., 1985, c. S -15, s. 91; 1988, c. 65, s. 43; 1999, c. 17, s. 183.

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.

1984, c. 25, s. 92.

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 sixty 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.

R.S., 1985, c. S -15, s. 93; R.S., 1985, c. 1 (2nd Supp.), s. 211.

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 Commissioner, and on every person employed by the Canada Customs and Revenue Agency 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 Commissioner at the time the Tribunal gives its ruling come to the Commissioner's attention after it is given.

R.S., 1985, c. S -15, s. 94; 1999, c. 17, s. 182.

Commissioner to provide name of importer

**95.** Where any person interested in the importation of goods into Canada requests the Commissioner to provide the person with the name of the importer of the goods, the Commissioner shall, except in prescribed circumstances, forthwith provide the person with the name of the importer.

R.S., 1985, c. S -15, s. 95; 1999, c. 17, s. 183.

### *Gathering of Information*

Commissioner may gather information in advance

**96.** In order to facilitate the administration and enforcement of this Act, where the Commissioner 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 section 3, 5 or 6 applies and that they will or may be imported into Canada, the Commissioner 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.

R.S., 1985, c. S -15, s. 96; 1994, c. 47, s. 185; 1999, c. 17, s. 183.

*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 Commissioner under paragraph 41(1)(a);
- (b) a decision of the Commissioner under paragraph 41(1)(b) to cause an investigation to be terminated;
- (c) a decision of the Commissioner under subsection 53(1) to renew or not to renew an undertaking;
  - (c.1) an order or finding of the Tribunal under subsection 43(1);
- (d) an order of the Tribunal under subsection 76.01(4) or 76.03(5);
  - (d.1) a determination of the Commissioner under paragraph 76.03(7)(a);
- (e) an order or finding of the Tribunal under subsection 76.02(4) respecting a review under subsection 76.02(1);
- (f) an order of the Tribunal under subsection 76.01(5) or 76.03(12); 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 Commissioner or the Tribunal, as the case may be,
  - (a) acted without jurisdiction, acted beyond the jurisdiction of the Commissioner 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 Commissioner 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 Commissioner or the Tribunal made in a perverse or capricious manner or without regard for the material before the Commissioner 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 thirty days after the time the determination, decision, order or finding was first communicated to that person by the Commissioner 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 thirty 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 Courts 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 Commissioner or the Tribunal, as the case may be, for determination in accordance with such directions as it considers appropriate.

1988, c. 65, s. 44; 1993, c. 44, s. 220; 1994, c. 47, s. 183; 1999, c. 12, s. 47, c. 17, ss. 183, 184; 2002, c. 8, s. 182.

## No references

**96.11** (1) Subsection 18.3(1) of the *Federal Courts Act* does not apply to the Commissioner 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.

1993, c. 44, s. 221; 1999, c. 17, s. 183; 2002, c. 8, s. 182.

## No references

**96.2** Subsection 18.3(1) of the *Federal Courts Act* does not apply to the Commissioner or the Tribunal in respect of proceedings under this Act relating to goods of the United States.

1988, c. 65, s. 44; 1990, c. 8, s. 73; 1999, c. 17, s. 183; 2002, c. 8, s. 182.

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 thirty 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 thirty 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.

1993, c. 44, s. 222; 1999, c. 12, s. 48(F).

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 twenty-five 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.

1988, c. 65, s. 44; 1999, c. 12, s. 49(F).

*Offences*

Offence

**96.4** (1) Every person commits an offence who

- (a) uses information disclosed to the person by the Commissioner under subsection 84(3) for any purpose other than the purpose for which the information was disclosed under that subsection; or
- (b) contravenes a condition imposed by the Commissioner under subsection 84(3).

Punishment

- (2) Every person who commits an offence under subsection (1) is guilty of
  - (a) an indictable offence and liable to a fine of not more than \$1,000,000; or
  - (b) an offence punishable on summary conviction and liable to a fine of not more than \$100,000.

Consent

(3) No proceedings for an offence under this section shall be instituted without the consent in writing of the Attorney General of Canada.

1999, c. 12, s. 50, c. 17, s. 184.

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) respecting the factors that may be considered in determining

- (i) the existence of injury, retardation or threat of injury, and
- (ii) whether the injury, retardation or threat of injury has been caused by the dumping or subsidizing of any goods or by any other reason;
- (b) specifying the circumstances and manner in which two or more properly documented complaints, investigations or inquiries 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, 1994, c. 47, s. 184]
- (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(1)(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(1)(c)(ii) or (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(6) 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;
  - (g.23) determining the meaning of the expression "goods of Chile" for the purposes 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 and normal values in situations of fluctuation or sustained movement in the rate of exchange;
  - (k.3) prescribing the period after which the Commissioner may refuse to consider representations referred to in subsection 49(5);
  - (k.4) prescribing the factors that the Commissioner may consider in making a determination under paragraph 76.03(7)(a);
  - (k.5) prescribing the factors that the Tribunal may consider in making a determination under subsection 76.03(10);
  - (k.6) providing for the manner of attributing principal and interest to imported goods when those amounts include a portion related to charges not directly associated with the value of the goods; 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.

R.S., 1985, c. S-15, s. 97; R.S., 1985, c. 1 (2nd Supp.), s. 212; 1988, c. 65, s. 45; 1993, c. 44, s. 223; 1994, c. 47, s. 184; 1997, c. 14, s. 93; 1999, c. 12, s. 51, c. 17, ss. 183, 184.

## ORDERS

Orders suspending application

**98.** (1) The Governor in Council may, for the purpose of ensuring that this Act complies with the Subsidies Agreement, by order, modify or suspend the application of any provision, in whole or in part, of this Act with respect to any country.

Period of order

(2) Unless revoked, an order made under subsection (1) has effect for the period specified in the order.

2000, c. 14, s. 47.

## RELATED PROVISIONS

-- **R.S., 1985, c. 41 (3rd Supp.), s. 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."

-- **1994, c. 47, ss. 187, 188:**

Definitions

**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 subsection 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.**

Redetermination of normal value, etc.

**(8) A redetermination 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.**

**-- 1994, c. 47, s. 189, as amended by 1997, c. 36, s. 212:**

Application to goods from a NAFTA country

**189. Sections 144 to 188, 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 16(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*.**

**-- 1999, c. 12, ss. 62 to 64:**

Definitions

**62. The definitions in this section apply in this section and sections 63 and 64.**



"commencement day" « *date de référence* »

**"commencement day" means the day on which this section comes into force.**

"new *Canadian International Trade Tribunal Act*" « *nouvelle Loi sur le Tribunal canadien du commerce extérieur* »

**"new *Canadian International Trade Tribunal Act*" means the *Canadian International Trade Tribunal Act* as it read on the commencement day.**

"new rules and regulations" « *nouveaux textes d'application* »

**"new rules and regulations" means the rules and regulations made under the new *Canadian International Trade Tribunal Act* and the regulations made under the new *Special Import Measures Act*.**

"new *Special Import Measures Act*" « *nouvelle Loi sur les mesures spéciales d'importation* »

**"new *Special Import Measures Act*" means the *Special Import Measures Act* as it read on the commencement day.**

"old *Canadian International Trade Tribunal Act*" « *ancienne Loi sur le Tribunal canadien du commerce extérieur* »

**"old *Canadian International Trade Tribunal Act*" means the *Canadian International Trade Tribunal Act* as it read on the day before the commencement day.**

"old rules and regulations" « *anciens textes d'application* »

**"old rules and regulations" means the rules and regulations made under the old *Canadian International Trade Tribunal Act* and the regulations made under the old *Special Import Measures Act*.**

"old *Special Import Measures Act*" « *ancienne Loi sur les mesures spéciales d'importation* »

**"old *Special Import Measures Act*" means the *Special Import Measures Act* as it read on the day before the commencement day.**

"order or finding" « *ordonnance ou conclusions* »

**"order or finding"**

- (a) **in the case of an order or finding made before the commencement day, has the same meaning as in subsection 2(1) of the old *Special Import Measures Act*; and**
- (b) **in the case of an order or finding made on or after the commencement day, has the same meaning as in subsection 2(1) of the new *Special Import Measures Act*.**

Disposition of notified complaints

**63. (1) Subject to this section, if, 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 subsection 2(1) of the old *Special Import Measures Act*, has been given under paragraph 32(1)(a) of that Act, any proceeding, process or action in respect of the goods shall be continued and disposed of in accordance with that Act, the old *Canadian International Trade Tribunal Act* and the old rules and regulations.**

Proceedings re goods subject to order made after commencement day

**(2) If the Canadian International Trade Tribunal makes an order or finding under 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 the following shall be disposed of in accordance with the new *Special Import Measures Act*, the new *Canadian International Trade Tribunal Act* and the new rules and regulations:**

- (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;**
- (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; or**
- (d) a proceeding, process or action under section 45 of the *Special Import Measures Act* in relation to that order or finding.**

Effect of order or finding

**(3) For greater certainty, any order or finding that was made before the commencement day and is in effect on that day shall, for the purposes of sections 3 to 6 of the new *Special Import Measures Act*, have the same force and effect as if it were made under that Act.**

Review in accordance with old Acts, rules and regulations

**(4) If notice of a review under subsection 76(2) of the old *Special Import Measures Act* has been given by the Canadian International Trade Tribunal before the commencement day, the review shall be disposed of in accordance with that Act, the old *Canadian International Trade Tribunal Act* and the old rules and regulations.**

Review in accordance with new Acts, rules and regulations

**(5) If notice of an interim review under section 76.01 of the new *Special Import Measures Act*, or an expiry review under section 76.03 of that Act, of an order or finding that was made before the commencement day and is in effect on that day has been given by the Canadian International Trade Tribunal on or after the commencement day, the review shall be disposed of in accordance with that Act, the new *Canadian International Trade Tribunal Act* and the new rules and regulations.**

New Act does not justify review

**(6) For the purpose of subsection 76.01(3) of the new *Special Import Measures Act*, the Canadian International Trade Tribunal may not be satisfied that an interim review of an order or finding that was made before the commencement day is warranted by reason only of the coming into force of that Act, the new *Canadian International Trade Tribunal Act* or the new rules and regulations.**

Determination of normal value, etc., when undertaking

**(7) 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 *Special Import Measures Act*.**

Determination of normal value, etc.

**(8) A normal value, export price, amount of subsidy or margin of dumping determined in relation to goods under the old *Special Import Measures Act* is, for the purposes of goods released on or after the commencement day, other than goods to which paragraph (2)(c) applies, deemed to have been made under the new *Special Import Measures Act*.**

Re-determination of normal value, etc.

**(9) A re-determination of a normal value, export price, amount of subsidy or margin of dumping referred to in subsection (8) shall be made in accordance with the new *Special Import Measures Act*.**

Application to goods from a NAFTA country

**64. The new *Special Import Measures Act*, the new *Canadian International Trade Tribunal Act* and the new rules and regulations apply to goods of a NAFTA country, within the meaning assigned to that expression by subsection 2(1) of the *Special Import Measures Act*.**

-- 1999, c. 17, s. 185:

Application to goods from NAFTA country

**185. The *Special Import Measures Act*, as amended by sections 180 to 184, and the regulations made under that Act, as interpreted under section 186 of this Act, apply to goods of a NAFTA country within the meaning assigned to that expression by subsection 2(1) of that Act.**

-- 1999, c. 17, s. 186:

References in documents and other provisions

**186. Any expression referring to the Deputy Minister of National Revenue or the Department of National Revenue in any document, any instrument made under an Act of Parliament, or any provision of an Act of Parliament not amended by this Act must, unless the context otherwise requires, be read as a reference to the Commissioner of Customs and Revenue or the Canada Customs and Revenue Agency, respectively.**

-- 2001, c. 25, s. 99:

**99. Sections 91 to 98 apply in relation to goods of a NAFTA country as defined in subsection 2(1) of the *Special Import Measures Act*.**

-- SOR/2001-53, ss. 1 to 3:

**1. The application of the definition "arbitration body" and of paragraph (b) of the definition "non-actionable subsidy" in subsection 2(1) of the *Special Import Measures Act* is suspended with respect to all countries.**

2. The application of the words "and subsection 31.1(1)" in subsection 31(6) of the Act is suspended with respect to all countries.

3. The application of section 31.1 of the Act is suspended with respect to all countries.

-- 2002, c. 8, s. 192:

Special Import Measures Act

192. Subsection 12(1.1), paragraphs 44(2)(a) and 59(1)(d) and subsections 77.01(1) and 77.1(1) of the *Special Import Measures Act*, as enacted or amended by sections 169 to 173 of this Act, apply to goods from a NAFTA country, as defined in subsection 2(1) of that Act.

-- 2002, c. 19, ss. 17, 18:

Definitions

17. The following definitions apply in this section and in section 18.

"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 regulations" « *nouveaux règlements* »

"new regulations" means the regulations made under the new Act.

"old Act" « *ancienne loi* »

"old Act" means the *Special Import Measures Act* as it read on the day before the commencement day.

"old regulations" « *anciens règlements* »

"old regulations" means the regulations made under the old Act.

"order or finding" « *ordonnance ou conclusions* »

"order or finding" has the same meaning as in subsection 2(1) of the *Special Import Measures Act*.

Disposition of notified complaints

18. (1) Subject to this section, if, 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 subsection 2(1) of the old Act, has been given under 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 regulations.

Proceedings re goods subject to order after commencement date

**(2) If the Canadian International Trade Tribunal makes an order or finding under 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 the following shall be disposed of in accordance with the new Act and the new regulations:**

- (a) a judicial review in relation to that order or finding and any proceeding, process or action in relation to the judicial review;**
- (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 Canadian International Trade Tribunal made the order or finding.**

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.**

Determination of normal value, etc., where undertaking

**(4) Any determination, on or after the commencement day, of a normal value 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.

**(5) A normal value 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.

**(6) A re-determination of a normal value or margin of dumping referred to in subsection (5) shall be made in accordance with the new Act.**

## CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT

**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 13 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" [Repealed, 1999, c. 12, s. 53]

"Chairperson" *Version anglaise seulement*

"Chairperson" means the Chairperson 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 the Agreement, in Appendix 1.1 of Annex C-00-B of the CCFTA or in Appendix III.1.1.1 of Annex III.1 of the CCRFTA, as the case may be;

"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*.

Same meaning

(2.1) In this Act,

(a) "CIFTA" has the same meaning as "Agreement" in subsection 2(1) of the *Canada-Israel Free Trade Agreement Implementation Act*;

(b) "Canada-Israel Free Trade Agreement Tariff" means the rates of customs duty referred to in section 50 of the *Customs Tariff*; and

(c) "imported from Israel or another CIFTA beneficiary" and "Israel or another CIFTA beneficiary" have the same meaning as in subsection 2(1) of the *Customs Tariff*.

Same meaning

(3) In this Act,

(a) "CCFTA" has the same meaning as "Agreement" in subsection 2(1) of the *Canada-Chile Free Trade Agreement Implementation Act*; and

(b) "Chile Tariff" means the rates of customs duty referred to in section 46 of the *Customs Tariff*.

Same meaning

(4) In this Act,

(a) "CCRFTA" has the same meaning as "Agreement" in subsection 2(1) of the *Canada--Costa Rica Free Trade Agreement Implementation Act*; and

(b) "Costa Rica Tariff" means the rates of customs duty referred to in section 49.1 of the *Customs Tariff*.

Goods imported from a NAFTA country, Chile or Costa Rica

(5) For the purposes of this Act, goods are imported from a NAFTA country, from Chile or from Costa Rica if they are shipped directly to Canada from the NAFTA country, from Chile or from Costa Rica, as the case may be, 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; 1996, c. 33, s. 16; 1997, c. 14, s. 19, c. 36, s. 192; 1999, c. 12, s. 53(E); 2001, c. 28, s. 19.

## 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

Provisions in force

Provisions suspended

section 19.01

section 20.01

section 20.2

section 21.1

subsections 23(1.01) to (1.03)

subparagraphs 26(1)(a)(i.1) to (i.3)

paragraphs 27(1)(a.1) to (a.3)

section 19.1

section 20.1

section 21

section 22

subsection 23(1.1)

subparagraph 26(1)(a)(ii)

paragraph 27(1)(b)

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 Chairperson, two Vice-Chairpersons 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.

R.S., 1985, c. 47 (4th Supp.), s. 3; 1999, c. 12, s. 54(E).

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 Chairperson

7. The Chairperson 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.

R.S., 1985, c. 47 (4th Supp.), s. 7; 1999, c. 12, s. 61(E).

Absence, etc., of Chairperson

8. (1) In the event of the absence or incapacity of the Chairperson or if the office of Chairperson is vacant, the Tribunal may authorize one of the Vice-Chairpersons to act as Chairperson for the time being, and a Vice-Chairperson so authorized has and may exercise and perform all the powers, duties and functions of the Chairperson.

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 Chairperson, 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.

R.S., 1985, c. 47 (4th Supp.), s. 8; 1999, c. 12, ss. 55(E), 61(E).

Acting after termination of appointment

9. (1) Subject to subsection (2), a person who has ceased to be a member, for any reason other than removal, may, with the authorization of the Chairperson, perform and complete any duties or responsibilities that the person would otherwise have had if the person had not ceased to be a member and that are in connection with any matter in which that person became engaged while holding office as a member, and a person so authorized is, for that purpose, 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 Chairperson 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 Chairperson, 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.

R.S., 1985, c. 47 (4th Supp.), s. 9; 1999, c. 12, ss. 56, 61(E).

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 Chairperson may authorize any officer or employee of the Tribunal to act as Secretary for the time being.

R.S., 1985, c. 47 (4th Supp.), s. 14; 1999, c. 12, s. 61(E).

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 United States 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 United States Tariff in the List of Tariff Provisions set out in the schedule 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, if 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 Mexico Tariff, or the Mexico--United States Tariff, in the List of Tariff Provisions set out in the schedule 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, if the Governor in Council, on the recommendation of the Minister, refers the question to it for inquiry and report.

Definition of "principal cause"

**19.011** (1) In this section, "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.

Emergency measures -- Israel or another CIFTA beneficiary

(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 Canada-Israel Free Trade Agreement Tariff are, as a result of that entitlement, 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.

Terms of reference

(3) The Tribunal shall conduct an inquiry under subsection (2) and prepare its report in accordance with the terms of reference established by the Governor in Council or the Minister, as the case may be.

Tabling of report

(4) The Minister shall cause a copy of each report submitted to the Governor in Council or the Minister 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

(5) The Tribunal shall cause notice of the submission of a report to be published in the *Canada Gazette*.

1996, c. 33, s. 17.

Definition of "principal cause"

**19.012** (1) In this section, "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.

Emergency measures – Chile

(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 Chile Tariff, other than textile and apparel goods, are, as a result of that entitlement, 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, if the Governor in Council, on the recommendation of the Minister, refers the question to it for inquiry and report.

Terms of reference

(3) The Tribunal shall conduct an inquiry under subsection (2) and prepare its report in accordance with the terms of reference established by the Governor in Council or the Minister, as the case may be.

Tabling of report

(4) The Minister shall cause a copy of each report submitted to the Governor in Council or the Minister 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

(5) The Tribunal shall cause notice of the submission of a report to be published in the *Canada Gazette*.

1997, c. 14, s. 20.

Definition of "principal cause"

**19.013** (1) In this section, "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.

Emergency measures -- Costa Rica

(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 Costa Rica Tariff, other than textile and apparel goods, are, as a result of that entitlement, 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, if the Governor in Council, on the recommendation of the Minister, refers the question to it for inquiry and report.

Terms of reference

(3) The Tribunal shall conduct an inquiry under subsection (2) and prepare its report in accordance with the terms of reference established by the Governor in Council or the Minister, as the case may be.

Tabling of report

(4) The Minister shall cause a copy of each report submitted to the Governor in Council or the Minister 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

(5) The Tribunal shall cause notice of the submission of a report to be published in the *Canada Gazette*.

2001, c. 28, s. 20.

Mid-term review

**19.02** (1) If an order made under subsection 55(1), section 60 or subsection 63(1) of the *Customs Tariff* or subsection 5(3), (3.2) or (4.1) 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 repealed 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; 1996, c. 33, s. 18; 1997, c. 14, s. 21, c. 36, s. 194.

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 United States 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 United States Tariff in the List of Tariff Provisions set out in the schedule 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, if 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; 1997, c. 36, s. 195.

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).

Determination in respect of goods of Israel or another CIFTA beneficiary

**20.02** (1) Where, in an inquiry conducted pursuant to a reference under section 20 into goods imported from Israel or another CIFTA beneficiary 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 contribute importantly to the serious injury or threat thereof.

Determinations

(2) In the case of an inquiry to which subsection (1) applies, the Tribunal shall include in its report any determinations made pursuant to that subsection.

Inquiry under section 30.07

(3) In an inquiry under section 30.07 into goods imported from Israel or another CIFTA beneficiary conducted pursuant to an extension request, the Tribunal shall determine

- (a) whether the quantity of the goods accounts for a substantial share of total imports of goods of the same kind; and
- (b) whether the goods contribute importantly to serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

Considerations

- (4) In making a determination under this section, the Tribunal shall take fully into account paragraph 2 of Article 4.6 of CIFTA.

1996, c. 33, s. 19.

Definition of "contribute importantly"

**20.03** (1) In this section, "contribute importantly" has the meaning given those words by Article F-05 of the CCFTA.

Determination in respect of Chilean goods

(2) Where, in an inquiry conducted pursuant to a reference under section 20 into goods imported from Chile 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 contribute importantly to the serious injury or threat thereof.

Determinations

(3) In the case of an inquiry to which subsection (2) applies, the Tribunal shall include in its report any determinations made under that subsection.

Determination where an extension request

(4) In an inquiry under section 30.07 into goods imported from Chile conducted pursuant to an extension request, the Tribunal shall determine

- (a) whether the quantity of the goods accounts for a substantial share of total imports of goods of the same kind; and
- (b) whether the goods contribute importantly to serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

Considerations

(5) In making a determination under this section, the Tribunal shall take fully into account paragraph 2 of Article F-02 of the CCFTA.

1997, c. 14, s. 22.

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 États-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 1 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., 1985, 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), (1.03), (1.04), (1.05), (1.06), (1.07) or (1.08) 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; 1996, c. 33, s. 20; 1997, c. 14, s. 23; 2001, c. 28, s. 21.

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.

Filing of complaint

(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 United States Tariff in the List of Tariff Provisions set out in the schedule 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.

Filing of complaint

(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 Mexico Tariff, or the Mexico--United States Tariff, in the List of Tariff Provisions set out in the schedule 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.

Filing of complaint

(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 section 24 of the *Customs Tariff* or, in respect of goods that have been integrated into the General Agreement on Tariffs and Trade on the basis of a commitment made by Canada under any

successor agreement to the Multifibre Arrangement, under subsection 45(13) of the *Customs Tariff*, to the United States Tariff, or the Mexico Tariff, in the List of Tariff Provisions set out in the schedule 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.

Filing of complaint – CIFTA Tariff

(1.04) Any domestic producer of goods that are like or directly competitive with goods being imported into Canada that are entitled to the Canada-Israel Free Trade Agreement Tariff, or any person or association acting on behalf of such a domestic producer, may file a written complaint with the Tribunal alleging that, as a result of that entitlement, 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.

Filing of complaint – Chile Tariff

(1.05) 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 Chile Tariff, or any person or association acting on behalf of such a domestic producer, may file a written complaint with the Tribunal alleging that, as a result of that entitlement, 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.

Filing of complaint – Chile Tariff

(1.06) 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 section 24 of the *Customs Tariff* or, in respect of goods that fall under the scope of the Agreement on Textiles and Clothing in Annex 1A of the World Trade Organization Agreement on the basis of a commitment made by Canada, under section 48 of the *Customs Tariff*, to the Chile Tariff, or any person or association acting on behalf of such a domestic producer, may file a written complaint with the Tribunal alleging that, as a result of that entitlement, 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 of serious damage, to domestic producers of like or directly competitive textile and apparel goods.

Filing of complaint – Costa Rica Tariff

(1.07) 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 Costa Rica Tariff, or any person or association acting on behalf of such a domestic producer, may file a written complaint with the Tribunal alleging that, as a result of that entitlement, 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.

Filing of complaint – Costa Rica Tariff

(1.08) 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 section 24 of the *Customs Tariff* or, in respect of goods that fall under the scope of the Agreement on Textiles and Clothing in Annex 1A of the World Trade Organization Agreement

pursuant to a commitment made by Canada, under section 49.2 of the *Customs Tariff*, to the Costa Rica Tariff, or any person or association acting on behalf of such a domestic producer, may file a written complaint with the Tribunal alleging that, as a result of that entitlement, 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.

#### Filing of complaint

(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 United States Tariff in the List of Tariff Provisions set out in the schedule 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); 1996, c. 33, s. 21; 1997, c. 14, s. 24, c. 36, s. 196; 2001, c. 28, s. 22.

#### Request 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), (1.06) or (1.08), 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; 1997, c. 14, s. 25; 2001, c. 28, s. 23.

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 United States Tariff in the List of Tariff Provisions set out in the schedule 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 Mexico Tariff, or the Mexico-United States Tariff, in the List of Tariff Provisions set out in the schedule 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 United States Tariff, or the Mexico Tariff, in the List of Tariff Provisions set out in the schedule 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,
- (i.4) in the case of a complaint filed under subsection 23(1.04), the goods that are entitled to the Canada-Israel Free Trade Agreement Tariff are, as a result of that entitlement, 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.5) in the case of a complaint filed under subsection 23(1.05), the goods that are entitled to the Chile Tariff are, as a result of that entitlement, 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.6) in the case of a complaint filed under subsection 23(1.06), the textile and apparel goods that are entitled to the Chile Tariff are, as a result of that entitlement, 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,
- (i.7) in the case of a complaint filed under subsection 23(1.07), the goods that are entitled to the Costa Rica Tariff are, as a result of that entitlement, 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.8) in the case of a complaint filed under subsection 23(1.08), the textile and apparel goods that are entitled to the Costa Rica Tariff are, as a result of that entitlement, 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 United States Tariff in the List of Tariff Provisions set out in the schedule 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, except an inquiry under sections 30.21 to 30.25, in relation to 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), (1.06) or (1.08), 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 under 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 Commissioner of Customs and 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 Commissioner.

## 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 Commissioner of Customs and Revenue for consideration under the *Special Import Measures Act* only if

- (a) the Commissioner 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 under section 35 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 Commissioner 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 Commissioner's decision or, where the Commissioner 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 Commissioner initiates such an investigation but terminates the investigation under section 35 or 41 of that Act, within thirty days after the date of the notice sent to the complainant under section 35 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) If subsection 55(5) of the *Customs Tariff* or subsection 5(3.1) of the *Export and Import Permits Act* prohibits the making of an order under subsection 55(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; 1988, c. 65, s. 57; 1993, c. 44, s. 42; 1994, c. 13, s. 7, c. 47, ss. 36, 46(F), 47(F); 1996, c. 33, s. 22; 1997, c. 14, s. 26, c. 36, s. 197; 1999, c. 12, s. 57, c. 17, ss. 114, 115; 2001, c. 28, s. 24; 2002, c. 19, s. 1.

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 United States Tariff in the List of Tariff Provisions set out in the schedule 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 Mexico Tariff, or the Mexico-United States Tariff, in the List of Tariff Provisions set out in the schedule 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 United States Tariff, or the Mexico Tariff, in the List of Tariff Provisions set out in the schedule 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;
- (a.4) in the case of a complaint filed under subsection 23(1.04), the goods that are entitled to the Canada-Israel Free Trade Agreement Tariff are, as a result of that entitlement, 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.5) in the case of a complaint filed under subsection 23(1.05), the goods that are entitled to the Chile Tariff are, as a result of that entitlement, 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.6) in the case of a complaint filed under subsection 23(1.06), the textile and apparel goods that are entitled to the Chile Tariff are, as a result of that entitlement, 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;

- (a.7) in the case of a complaint filed under subsection 23(1.07), the goods that are entitled to the Costa Rica Tariff are, as a result of that entitlement, 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.8) in the case of a complaint filed under subsection 23(1.08), the textile and apparel goods that are entitled to the Costa Rica Tariff are, as a result of that entitlement, 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 United States Tariff in the List of Tariff Provisions set out in the schedule 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.

Considerations

(2.2) In making a determination under paragraph (1)(a.6), regard shall be had to paragraph 2 of section 3 of Annex C-00-B of the CCFTA.

Considerations

(2.3) In making a determination under paragraph (1)(a.8), regard shall be had to paragraph 2 of section 4 of Annex III.1 of the CCRFTA.

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); 1996, c. 33, s. 23; 1997, c. 14, s. 27, c. 36, s. 198; 2001, c. 28, s. 25.

Reference to Commissioner

**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 Commissioner of Customs and 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 Commissioner of Customs and Revenue for consideration under the *Special Import Measures Act*, the Tribunal shall resume the inquiry only if

- (a) the Commissioner 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 under section 35 or 41 of that Act; and
- (b) the complainant applies to the Tribunal to resume the inquiry
  - (i) in the case where the Commissioner 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 Commissioner's decision or, where the Commissioner 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 Commissioner initiates such an investigation but terminates the investigation under section 35 or 41 of that Act, within thirty days after the date of the notice sent to the complainant under section 35 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); 1999, c. 12, s. 58, c. 17, ss. 114, 115.

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.

R.S., 1985, c. 47 (4th Supp.), s. 29; 2002, c. 19, s. 2(F).

#### 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.

R.S., 1985, c. 47 (4th Supp.), s. 30; 2002, c. 19, s. 3(F).

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 55(1) or 63(1) of the *Customs Tariff* or are included on the Import Control List under 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; 1997, c. 36, s. 199.

#### Filing of surge complaint – CIFTA

**30.011** (1) A written complaint may be filed with the Tribunal where

- (a) any goods are subject to a surtax under subsection 55(1) or 63(1) of the *Customs Tariff* or are included on the Import Control List under 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 Israel or another CIFTA beneficiary on the basis of a determination made under subsection 20.02(1) or (3).

#### Allegations

(2) The complaint must allege that a surge of imports of goods imported from Israel or another CIFTA beneficiary undermines the effectiveness of the surtax or the inclusion of the goods on the Import Control List.

#### Who must file complaint

(3) The complaint must be filed by a domestic producer of like or directly competitive goods, or a person or association acting on behalf of such a domestic producer.

Contents of complaint

(4) A complaint must state in reasonable detail the facts on which the allegations are based and must 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

(5) 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 discloses a reasonable indication that a surge of imports of goods referred to in subsection (1) is undermining the effectiveness of the surtax or the inclusion referred to in that subsection.

Notice of decision

(6) Where the Tribunal decides not to commence an inquiry into a complaint under subsection (5), it shall immediately 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

(7) The Tribunal shall, in the inquiry, determine whether a surge of imports of goods referred to in subsection (1) is undermining the effectiveness of the surtax or the inclusion referred to in that subsection.

Report

(8) 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

(9) The Tribunal shall cause notice of the report to be given to other interested parties and to be published in the *Canada Gazette*.

1996, c. 33, s. 24; 1997, c. 36, s. 200.

Definition of "surge"

**30.012** (1) In this section, "surge" has the meaning given that word by Article F-05 of the CCFTA.

Filing of surge complaint

- (2) A written complaint may be filed with the Tribunal if
- (a) any goods are subject to a surtax under subsection 55(1) or 63(1) of the *Customs Tariff* or are included on the Import Control List under 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 Chile on the basis of a determination made under subsection 20.03(2) or (4) of this Act.

Allegations

- (3) The complaint must allege that a surge of imports of goods imported from Chile undermines the effectiveness of the surtax or the inclusion of the goods on the Import Control List.

Who must file complaint

- (4) 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

- (5) A complaint must state in reasonable detail the facts on which the allegations are based and must be accompanied by the information that is available to the complainant to prove those facts and any other information that may be required by the rules.

Commencement of inquiry

- (6) 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 discloses 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

- (7) Where the Tribunal decides not to commence an inquiry into a complaint under subsection (6), it shall immediately 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, if 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

- (8) 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

- (9) 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

- (10) The Tribunal shall cause notice of the report to be given to other interested parties and to be published in the *Canada Gazette*.

## 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 expiry date of any order that imposes a surtax on any goods under subsection 55(1), section 60 or subsection 63(1) of the *Customs Tariff* or includes any goods on the Import Control List under subsection 5(3), (3.2) or (4.1) of the *Export and Import Permits Act*, but no notice shall be published if

- (a) the order is repealed or ceases to have effect under subsection 56(1) or (2), 59(2) or 63(5) or section 64 of the *Customs Tariff* or is revoked under subsection 5(4.4) of the *Export and Import Permits Act* before the end 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 under subsection 55(1), section 60 or subsection 63(1) of the *Customs Tariff* or subsection 5(3), (3.2) or (4.1) 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; 1996, c. 33, s. 25; 1997, c. 14, s. 29, c. 36, s. 202.

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 under subsection 63(1) 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; 1996, c. 33, s. 26; 1997, c. 14, s. 30, c. 36, s. 203.

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 twenty-one 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 forty-five 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 fifteen 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.

Chairperson may assign member

(3) The Chairperson 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); 1999, c. 12, s. 61(E).

Notice of receipt

**30.12** (1) The Tribunal shall 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.

## SAFEGUARD MEASURES IN RESPECT OF CHINA

### Definitions

**30.2** The following definitions apply in this section and in sections 30.21 to 30.25.

"action" « *mesure* »

"action" means

- (a) any action, including a provisional action, taken
- (i) by the People's Republic of China to prevent or remedy market disruption in a WTO Member other than Canada, or
- (ii) by a WTO Member other than Canada to withdraw concessions under the World Trade Organization Agreement or otherwise to limit imports to prevent or remedy market disruption in that Member caused or threatened by the importation of goods originating in the People's Republic of China; or
- (b) any combination of actions referred to in paragraph (a).

"market disruption" « *désorganisation du marché* »

"market disruption" means a rapid increase in the importation of goods that are like or directly competitive with goods produced by a domestic industry, in absolute terms or relative to the production of those goods by a domestic industry, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

"significant cause" « *cause importante* »

"significant cause" means, in respect of a material injury or threat thereof, an important cause that need not be as important as, or more important than, any other cause of the material injury or threat.

"WTO Member" « *membre de l'OMC* »

"WTO Member" means a Member of the World Trade Organization established by Article I of the Agreement Establishing the World Trade Organization, signed at Marrakesh on April 15, 1994.

2002, c. 19, s. 4.

Inquiry into market disruption and trade diversion

**30.21** (1) The Tribunal shall inquire into and report to the Governor in Council on any matter in relation to

- (a) the importation of goods originating in the People's Republic of China into Canada in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods, or
- (b) any action that causes or threatens to cause a significant diversion of trade into the domestic market in Canada

that the Governor in Council refers to the Tribunal for inquiry.

Terms of reference

(2) The Tribunal shall conduct an inquiry under subsection (1) and shall prepare its report on it in accordance with the terms of reference established by the Governor in Council.

Tabling of report

(3) The Minister shall cause a copy of each report submitted to the Governor in Council pursuant to this section 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.

Notice of report

(4) The Tribunal shall cause a notice of the submission of a report pursuant to this section to be published in the *Canada Gazette*.

2002, c. 19, s. 4.

Filing of complaint – market disruption

**30.22** (1) Any domestic producer of goods that are like or directly competitive with goods originating in the People's Republic of China 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 or under such conditions as to cause or threaten to cause market disruption 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;
  - (c) be accompanied by any information that is available to the complainant to support the facts referred to in paragraph (a) and to substantiate the estimate referred to in paragraph (b);
  - (d) be accompanied by any other information that may be required by the rules; and
  - (e) make any other representations that the complainant deems relevant to the matter.

Commencement of inquiry

(3) On receipt of a complaint that meets the requirements of subsection (2), the Tribunal shall 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 discloses a reasonable indication that the goods originating in the People's Republic of China that are the subject of the complaint are being imported in such increased quantities or under such conditions as to cause or threaten to cause market disruption 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 the domestic production of the like or directly competitive goods; and
- (c) where an inquiry under this section and sections 30.21 and 30.23 to 30.25 in relation to like or directly competitive goods has been completed or terminated during the twelve-month period preceding the date of receipt of the complaint, that the circumstances are sufficiently different to warrant a new inquiry.

Notice of decision to commence inquiry

(4) Where the Tribunal decides to commence an inquiry into the complaint, it shall immediately

- (a) notify the complainant and each other interested party in writing of its decision, of the reasons for it 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 complaint, and the information accompanying the complaint, and a copy of any other relevant information examined by the Tribunal in relation to the complaint.

Notice of decision not to commence inquiry

(5) Where the Tribunal decides not to commence an inquiry into the complaint, it shall immediately

- (a) notify the complainant and each other interested party in writing of its decision, 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*.

Determination by Tribunal

(6) The Tribunal shall, in the inquiry into the complaint, determine whether, having regard to any regulations made pursuant to paragraphs 40(a) and (k.1), the goods originating in the People's Republic of China that are the subject of the complaint are being imported in such increased

quantities or under such conditions that they cause or threaten to cause market disruption to domestic producers of like or directly competitive goods.

Other matters

(7) The Tribunal shall, in the inquiry into the complaint, examine any other matter in relation to the complaint that the Governor in Council refers to it for examination.

Report on inquiry

(8) The Tribunal shall prepare a report on the inquiry not later than ninety days after the inquiry is commenced and shall submit a copy of it 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

(9) The Tribunal shall cause a notice of the report to be given to each other interested party and to be published in the *Canada Gazette*.

Tabling of report in certain cases

(10) Where, pursuant to subsection (7), the Governor in Council refers a matter to the Tribunal, 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.

2002, c. 19, s. 4.

Filing of complaint – trade diversion

**30.23** (1) Any domestic producer of goods that are like or directly competitive with goods that are subject to any action, or any person or association acting on behalf of any such domestic producer, may file a written complaint with the Tribunal alleging that the action causes or threatens to cause a significant diversion of trade into the domestic market in Canada.

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;
  - (c) be accompanied by any information that is available to the complainant to support the facts referred to in paragraph (a) and to substantiate the estimate referred to in paragraph (b);
  - (d) be accompanied by any other information that may be required by the rules; and
  - (e) make any other representations that the complainant deems relevant to the matter.

Commencement of inquiry

(3) On receipt of a complaint that meets the requirements of subsection (2), the Tribunal shall 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 discloses a reasonable indication that an action causes or threatens to cause a significant diversion of trade into the domestic market in Canada; and
- (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.

Notice of decision to commence inquiry

(4) Where the Tribunal decides to commence an inquiry into the complaint, it shall immediately

- (a) notify the complainant and each other interested party in writing of its decision, of the reasons for it 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 complaint, and the information accompanying the complaint, and a copy of any other relevant information examined by the Tribunal in relation to the complaint.

Notice of decision not to commence inquiry

(5) Where the Tribunal decides not to commence an inquiry into the complaint, it shall immediately

- (a) notify the complainant and each other interested party in writing of its decision, 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*.

Determination by Tribunal

(6) The Tribunal shall, in the inquiry into the complaint, determine whether, having regard to any regulations made pursuant to paragraphs 40(a) and (k.1), an action causes or threatens to cause a significant diversion of trade into the domestic market in Canada.

Other matters

(7) The Tribunal shall, in an inquiry, examine any other matter in relation to the complaint that the Governor in Council refers to it for examination.



Report on inquiry

(8) The Tribunal shall prepare a report on the inquiry not later than seventy days after the inquiry is commenced and shall submit a copy of it 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

(9) The Tribunal shall cause a notice of the report to be given to each other interested party and to be published in the *Canada Gazette*.

Tabling of report in certain cases

(10) Where, pursuant to subsection (7), the Governor in Council refers a matter to the Tribunal, 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.

2002, c. 19, s. 4.

Further inquiry

**30.24** (1) The Governor in Council may, at any time after the receipt of a report prepared by the Tribunal pursuant to subsection 30.22(8) or 30.23(8), 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 on it in accordance with the terms of reference 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 30.22(8) or 30.23(8), as the case may be.

Notice of report

(4) The Tribunal shall cause a notice of the submission of a report to the Governor in Council pursuant to subsection (1) to be given to each other interested party and 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.

2002, c. 19, s. 4.

Notice of expiring orders

**30.25** (1) The Tribunal shall cause to be published in the *Canada Gazette* a notice of the expiry date of any order that imposes a surtax on any goods under subsection 77.1(2) or 77.3(1) of the

*Customs Tariff* or includes any goods on the Import Control List under subsection 5.4(2) or (4) of the *Export and Import Permits Act*, but no notice shall be published if the order ceases to have effect or is repealed under section 77.2, subsection 77.3(4) or section 77.4 of the *Customs Tariff* or is repealed under subsection 5.4(5) of the *Export and Import Permits Act* before the end of the effective period specified in that order.

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.

Filing of request relating to extension orders

(3) Any domestic producer of goods that are like or directly competitive with any goods that are subject to an order referred to in subsection (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 under subsection 77.3(1) of the *Customs Tariff* or subsection 5.4(4) of the *Export and Import Permits Act* because an order continues to be necessary to prevent or remedy market disruption to domestic producers of like or directly competitive goods.

Time limit for filing extension request

(4) An extension request shall be filed no later than the final date for filing specified in the notice published pursuant to subsection (2).

Receipt to be acknowledged

(5) The Tribunal shall, forthwith after receipt of an extension request, notify the requester in writing of its receipt and the date of its receipt.

Contents of extension request

- (6) An extension request 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 extension request is filed;
  - (c) be accompanied by any information that is available to the complainant to support the facts referred to in paragraph (a) and to substantiate the estimate referred to in paragraph (b);
  - (d) be accompanied by any other information that may be required by the rules; and
  - (e) make any other representations that the requester deems relevant to the matter.

Inquiries into extension requests

(7) On receipt of an extension request that meets the requirements of subsection (6), the Tribunal shall commence an inquiry into the request within thirty days after the request is filed 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 market disruption 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 the domestic production of the like or directly competitive goods.

Notice of decision to commence inquiry

(8) Where the Tribunal decides to commence an inquiry into the extension request, it shall immediately

- (a) notify the requester and each other interested party in writing of its decision, of the reasons for it 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 extension request, and the information accompanying the extension request, and a copy of any other relevant information examined by the Tribunal in relation to the extension request.

Notice of decision not to commence inquiry

(9) Where the Tribunal decides not to commence an inquiry into the extension request, it shall immediately

- (a) notify the requester and each other interested party in writing of its decision, 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*.

Continuing necessity of order

(10) The Tribunal shall, in the inquiry into the extension request, determine whether an order continues to be necessary to prevent or remedy market disruption to domestic producers of like or directly competitive goods.

Other matters

(11) The Tribunal shall, in the inquiry into the extension request, examine any other matter in relation to the extension request that the Governor in Council refers to it for examination.

Report on extension inquiry

(12) The Tribunal shall prepare a report on the inquiry not later than forty-five days before the expiry date of the order to which the inquiry under subsection (7) relates and shall 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

(13) The Tribunal shall cause a notice of the report to be given to each other interested party and to be published in the *Canada Gazette*.

Tabling of report in certain cases

(14) Where, pursuant to subsection (11), the Governor in Council refers a matter to the Tribunal, 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.

2002, c. 19, s. 4.

Expiry date

**30.26** Sections 30.2 to 30.25 cease to have effect on 11 December 2013.

2002, c. 19, s. 4.

## 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 Chairperson 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.

R.S., 1985, c. 47 (4th Supp.), s. 33; 1999, c. 12, s. 61(E).

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 must accompany a complaint filed under any of subsections 23(1) to (1.1), 30.01(2), 30.011(1), 30.012(2), 30.11(1), 30.22(1) and 30.23(1) or an extension request filed under subsection 30.04(1) or 30.25(3); 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; 1996, c. 33, s. 27; 1997, c. 14, s. 31; 2002, c. 19, s. 5.

#### 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, 19 or 30.21, 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;
  - (f) 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;
  - (k.1) providing, for the purposes of sections 30.2 to 30.25, factors for determining whether
    - (i) goods originating in the People's Republic of China are being imported in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods, or
    - (ii) an action causes or threatens to cause a significant diversion of trade into the domestic market in Canada;
  - (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; 2002, c. 19, s. 6.

#### *Annual Report*

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 and experts

(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 or to an expert, acting under the control or direction of that counsel, for use,



notwithstanding any other Act or law, by that counsel or expert only in those proceedings, subject to any conditions that the Tribunal considers 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 or the expert 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 on whose behalf the expert is acting; or
- (b) any business competitor or rival of any person to whose business or affairs the information relates.

Disclosure to Tribunal's experts

(3.1) Notwithstanding subsection (1), the Tribunal may disclose information to which that subsection applies to an expert retained by the Tribunal for use, notwithstanding any other Act or law, by the expert only in proceedings before the Tribunal under the *Special Import Measures Act* or this Act, subject to any conditions that the Tribunal considers 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 the expert to any person in any manner that is calculated or likely to make it available to

- (a) any party to the proceedings; or
- (b) any business competitor or rival of any person to whose business or affairs the information relates.

Disclosure to persons described in subsection (5)

(3.2) For greater certainty, disclosure of information under subsection (3) or (3.1) to a person described in subsection (5) who is an employee of an institution of the Government of Canada that is a party to the proceedings or, in the case of subsection (3), other proceedings is not disclosure to a party to those proceedings for the purposes of subsection (3) or (3.1).

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.

Persons who may be recognized as experts

(5) In subsections (3) and (3.1), "expert" includes any of the following persons whom the Tribunal recognizes as an expert:

- (a) persons whose duties involve the carrying out of the *Competition Act* and who are referred to in section 25 of that Act, other than persons authorized by the Governor in Council to exercise the powers and perform the duties of the Director of Investigation and Research;
- (b) in respect of the determination of damages and costs in procurement review proceedings, persons employed in the government institution involved in the procurement under review; and

- (c) any prescribed person.

Offence

- (6) Every person commits an offence who
  - (a) uses information disclosed to the person by the Tribunal under subsection (3) or (3.1) for any purpose other than the purpose for which the information was disclosed under that subsection; or
  - (b) contravenes any condition imposed by the Tribunal under subsection (3) or (3.1).

Punishment

- (7) Every person who commits an offence under subsection (6) is guilty of
  - (a) an indictable offence and liable to a fine of not more than \$1,000,000; or
  - (b) an offence punishable on summary conviction and liable to a fine of not more than \$100,000.

Consent

(8) No proceedings for an offence under subsection (6) shall be instituted without the consent in writing of the Attorney General of Canada.

Bar from appearing before Tribunal

(9) In addition to any punishment imposed under subsection (7), counsel or an expert who commits an offence under subsection (6) may be barred by the Tribunal from any further appearance before it in respect of any proceedings before the Tribunal for the period that the Tribunal considers appropriate.

R.S., 1985, c. 47 (4th Supp.), s. 45; 1994, c. 47, s. 44; 1999, c. 12, s. 59.

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 or 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 fifteen 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.** If
- (a) information or material 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 Commissioner of Customs and Revenue indicates to the Tribunal in writing that subsection 84(1) of the *Special Import Measures Act* applies to information or

material filed with the Secretary under paragraph 37(a) or 38(3)(b) or subsection 76.03(9) of that Act,

the information or material 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., 1985, c. 47 (4th Supp.), s. 49; 1994, c. 13, s. 7; 1999, c. 12, s. 60, c. 17, ss. 114, 115.

## 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 underway 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., 1985, 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 Chairperson may specify for the protection and preservation of the rights and interests of the parties or, where the Chairperson determines that any such proceedings should not be so taken up and continued, those proceedings shall be terminated.



Supervision by Chairperson

(2) The Chairperson 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.

R.S., 1985, c. 47 (4th Supp.), s. 59; 1999, c. 12, s. 61(E).

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]

### RELATED PROVISIONS

-- 1999, c. 12, ss. 62 to 64:

Definitions

**62. The definitions in this section apply in this section and sections 63 and 64.**

"commencement day" « *date de référence* »

**"commencement day" means the day on which this section comes into force.**

"new *Canadian International Trade Tribunal Act*" « *nouvelle Loi sur le Tribunal canadien du commerce extérieur* »

**"new *Canadian International Trade Tribunal Act*" means the *Canadian International Trade Tribunal Act* as it read on the commencement day.**

"new rules and regulations" « *nouveaux textes d'application* »

**"new rules and regulations" means the rules and regulations made under the new *Canadian International Trade Tribunal Act* and the regulations made under the new *Special Import Measures Act*.**

"new *Special Import Measures Act*" « *nouvelle Loi sur les mesures spéciales d'importation* »

**"new *Special Import Measures Act*" means the *Special Import Measures Act* as it read on the commencement day.**

"old *Canadian International Trade Tribunal Act*" « *ancienne Loi sur le Tribunal canadien du commerce extérieur* »

**"old *Canadian International Trade Tribunal Act*" means the *Canadian International Trade Tribunal Act* as it read on the day before the commencement day.**

"old rules and regulations" « *anciens textes d'application* »

**"old rules and regulations" means the rules and regulations made under the old *Canadian International Trade Tribunal Act* and the regulations made under the old *Special Import Measures Act*.**

"old *Special Import Measures Act*" « *ancienne Loi sur les mesures spéciales d'importation* »

**"old *Special Import Measures Act*" means the *Special Import Measures Act* as it read on the day before the commencement day.**

"order or finding" « *ordonnance ou conclusions* »

**"order or finding"**

**(a) in the case of an order or finding made before the commencement day, has the same meaning as in subsection 2(1) of the old *Special Import Measures Act*; and**

- (b) in the case of an order or finding made on or after the commencement day, has the same meaning as in subsection 2(1) of the new *Special Import Measures Act*.

Disposition of notified complaints

63. (1) Subject to this section, if, 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 subsection 2(1) of the old *Special Import Measures Act*, has been given under paragraph 32(1)(a) of that Act, any proceeding, process or action in respect of the goods shall be continued and disposed of in accordance with that Act, the old *Canadian International Trade Tribunal Act* and the old rules and regulations.

Proceedings re goods subject to order made after commencement day

(2) If the Canadian International Trade Tribunal makes an order or finding under 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 the following shall be disposed of in accordance with the new *Special Import Measures Act*, the new *Canadian International Trade Tribunal Act* and the new rules and regulations:

- (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;
- (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; or
- (d) a proceeding, process or action under section 45 of the *Special Import Measures Act* in relation to that order or finding.

Effect of order or finding

(3) For greater certainty, any order or finding that was made before the commencement day and is in effect on that day shall, for the purposes of sections 3 to 6 of the new *Special Import Measures Act*, have the same force and effect as if it were made under that Act.

Review in accordance with old Acts, rules and regulations

(4) If notice of a review under subsection 76(2) of the old *Special Import Measures Act* has been given by the Canadian International Trade Tribunal before the commencement day, the review shall be disposed of in accordance with that Act, the old *Canadian International Trade Tribunal Act* and the old rules and regulations.

Review in accordance with new Acts, rules and regulations

(5) If notice of an interim review under section 76.01 of the new *Special Import Measures Act*, or an expiry review under section 76.03 of that Act, of an order or finding that was made before the commencement day and is in effect on that day has been given by the

**Canadian International Trade Tribunal on or after the commencement day, the review shall be disposed of in accordance with that Act, the new *Canadian International Trade Tribunal Act* and the new rules and regulations.**

New Act does not justify review

**(6) For the purpose of subsection 76.01(3) of the new *Special Import Measures Act*, the Canadian International Trade Tribunal may not be satisfied that an interim review of an order or finding that was made before the commencement day is warranted by reason only of the coming into force of that Act, the new *Canadian International Trade Tribunal Act* or the new rules and regulations.**

Determination of normal value, etc., when undertaking

**(7) 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 *Special Import Measures Act*.**

Determination of normal value, etc.

**(8) A normal value, export price, amount of subsidy or margin of dumping determined in relation to goods under the old *Special Import Measures Act* is, for the purposes of goods released on or after the commencement day, other than goods to which paragraph (2)(c) applies, deemed to have been made under the new *Special Import Measures Act*.**

Re-determination of normal value, etc.

**(9) A re-determination of a normal value, export price, amount of subsidy or margin of dumping referred to in subsection (8) shall be made in accordance with the new *Special Import Measures Act*.**

Application to goods from a NAFTA country

**64. The new *Special Import Measures Act*, the new *Canadian International Trade Tribunal Act* and the new rules and regulations apply to goods of a NAFTA country, within the meaning assigned to that expression by subsection 2(1) of the *Special Import Measures Act*.**

**-- 1999, c. 17, s. 116:**

Application to goods from NAFTA country

**116. The *Canadian International Trade Tribunal Act*, as amended by sections 114 and 115, and the rules and regulations made under that Act, as interpreted under section 186 of this Act, apply to goods of a NAFTA country within the meaning assigned to that expression by subsection 2(1) of the *Special Import Measures Act*.**

**-- 1999, c. 17, s. 186:**

References in documents and other provisions

**186. Any expression referring to the Deputy Minister of National Revenue or the Department of National Revenue in any document, any instrument made under an Act of Parliament, or any provision of an Act of Parliament not amended by this Act must, unless the**

**context otherwise requires, be read as a reference to the Commissioner of Customs and Revenue or the Canada Customs and Revenue Agency, respectively.**

## Special Import Measures Regulations

SOR/84-927

### SPECIAL IMPORT MEASURES ACT

#### 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" [Repealed, SOR/2001-54, s. 1]

"officer" means an officer as defined in subsection 2(1) of the *Customs Act*; (*agent*)

"pre-competitive development activity" [Repealed, SOR/2001-54, s. 1]

"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*) SOR/89-63, s. 1; SOR/95-26, s. 1; SOR/96-255, ss. 1, 25; SOR/2001-54, s. 1.

##### 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. SOR/94-20, s. 1.

## 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(1)(c)(i) of the Act, where 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. SOR/92-236, s. 1; SOR/2000-138, s. 11.

**8.** For the purposes of sections 15 and 19 and subparagraph 20(1)(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. SOR/92-236, s. 1; SOR/2000-138, s. 11.

*Substitution of Trade Level*

**9.** For the purposes of sections 15 and 19 and subparagraph 20(1)(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. SOR/2000-138, s. 11.

*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 (1)(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. SOR/95-26, s. 2; SOR/96-255, ss. 2, 25; SOR/2000-138, s. 1.

**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. SOR/96-255, ss. 3, 25.

**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. SOR/95-26, s. 3; SOR/96-255, ss. 4, 25.

**13.** For the purposes of paragraph 11(1)(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(1)(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(1)(b)(iv)", as the case may be, wherever that expression occurs in those sections. SOR/95-26, s. 3; SOR/2000-138, s. 2.

**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. SOR/95-26, s. 3; SOR/96-255, ss. 5, 25.

#### *State Trading Countries*

**14.** For the purpose of determining the normal value of any goods pursuant to paragraph 20(1)(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. SOR/2000-138, s. 3.

**15.** For the purpose of determining the normal value of any goods pursuant to paragraph 20(1)(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. SOR/2000-138, s. 12.

**16.** For the purpose of determining the normal value of any goods pursuant to paragraph 20(1)(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. SOR/2000-138, s. 12.

**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. SOR/96-255, ss. 6, 25.

**17.1** (1) For the purposes of subsection 20(1) of the Act, the customs territory of the People's Republic of China is a prescribed country.

- (2) This section ceases to have effect on December 11, 2016. SOR/2002-349, s. 1.

*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(1)(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. SOR/2000-138, s. 12.

## 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. SOR/96-255, ss. 7, 25.

**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. SOR/96-255, ss. 7, 25.

**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. SOR/96-255, ss. 8, 25.

*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. SOR/92-590, s. 1(E); SOR/96-255, ss. 9, 25.

*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*. SOR/95-26, s. 4; SOR/96-255, ss. 10, 25.

## 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 Commissioner.

(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). SOR/95-26, s. 4; SOR/96-255, ss. 11, 25; SOR/2000-138, s. 13.

**25.3** [Repealed, SOR/2001-54, s. 2]

## 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. SOR/95-26, ss. 5, 17.

#### *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 10 years, of fixed assets used by the industry of that person. SOR/92-236, s. 2(E); SOR/95-26, s. 17.

**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. SOR/95-26, s. 6.

#### *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. SOR/95-26, s. 7; SOR/96-255, ss. 12, 25.

**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. SOR/95-26, s. 7; SOR/96-255, ss. 13, 25.

**30.** The discount rate for the purposes of section 28 is the same as the interest rate determined in accordance with subsection 29(2). SOR/95-26, s. 7.

**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. SOR/92-236, s. 3(E); SOR/96-255, ss. 14, 25.

#### *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. SOR/95-26, s. 8; SOR/96-255, ss. 15, 25; SOR/2002-67, s. 1(F).

*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. SOR/95-26, s. 17.

*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. SOR/95-26, s. 17.

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. SOR/95-26, s. 9; SOR/96-255, ss. 16, 25.

*Excessive Relief of Duties and Taxes on Exported Goods*

**35.** Where the subsidy in relation to any subsidized goods is contingent on the export of the goods and is in the form of an exemption from or remission, refund or drawback equal to an amount greater than the duties or taxes levied on the production, purchase, distribution, transportation, sale, export or import of the goods, the amount of subsidy shall be determined by deducting the amount of duties or taxes levied on or in respect of the exported goods, or the amount of duties or taxes that would have been levied on or in respect of the goods if they had not been exported, from the amount of the exemption, remission, refund or drawback that was granted in connection with the goods, and dividing the result by the quantity of goods, in relation to which the exemption, remission, refund or drawback was granted, that were exported during the period for which the duties or taxes were exempted, remitted, refunded or drawn back. SOR/95-26, s. 17; SOR/96-255, ss. 17, 25; SOR/2000-138, s. 4.

*Excessive Relief of Duties and Taxes 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 an exemption from or remission, refund or drawback equal to an amount greater than the duties or taxes levied on goods consumed in the production of the exported goods, the amount of subsidy shall be determined by deducting the amount of duties or taxes levied on or in respect of the consumed goods from the amount of the exemption, remission, refund or drawback that was granted in connection with the consumed goods, and dividing the result by the quantity of goods, in relation to which the exemption, remission, refund or drawback was granted, that were exported during the period for which the duties or taxes were exempted, remitted, refunded or drawn back.

(2) For the purpose of subsection (1), the only goods considered to be consumed in the production of the exported goods are

- (a) energy, fuel, oil and catalysts that are used or consumed in the production of the exported goods; and
- (b) goods incorporated into the exported goods. SOR/96-255, ss. 17, 25; SOR/2000-138, s. 4.

*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. SOR/95-26, s. 10.

*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. SOR/95-26, s. 10.

*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. SOR/95-26, s. 11.

**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. SOR/96-255, ss. 18, 25.

**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*) SOR/94-20, s. 2.

**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. SOR/94-20, s. 2.

**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. SOR/94-20, s. 2.

**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. SOR/94-20, s. 2.

**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. SOR/94-20, s. 2.

**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) and 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. SOR/94-20, s. 2.

**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. SOR/94-20, s. 2.

## **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. SOR/89-63, s. 2.

**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. SOR/89-63, s. 2.

**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. SOR/89-63, s. 2.

**36.4** (1) For the purposes of subsection 77.12(1) of the Act, the manner by 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 Commissioner or every person that appeared in the proceedings before the

Tribunal, as the case may be, shall be in writing. SOR/89-63, s. 2; SOR/90-662, s. 1; SOR/92-236, s. 4; SOR/2000-138, s. 13.

(2) [Repealed, SOR/92-236, s. 4]

**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. SOR/89-63, s. 2.

**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. SOR/89-63, s. 2; SOR/92-590, s. 2.

**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. SOR/89-63, s. 2; SOR/92-236, s. 5(F).

### 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. SOR/95-26, s. 12; SOR/96-255, s. 19(F).

##### *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;
    - (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and

(h) any other factors that are relevant in the circumstances.

(3) For the purpose 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 the goods and the injury, retardation or threat of injury, on the basis of the factors listed in subsections (1) and (2); and
- (b) whether any factors other than the dumping or subsidizing of the goods have caused injury or retardation or are threatening to cause 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) any change in the pattern 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. SOR/95-26, s. 12; SOR/96-255, s. 20; SOR/2000-138, s. 5.

**37.11** For the purposes of determining whether injury has been caused by a massive importation of dumped or subsidized goods, or by a series of importations of dumped or subsidized goods where the importations have occurred within a relatively short period of time and in the aggregate are massive, the following factors are prescribed:

- (a) whether there has been an increase of at least 15% in the volume of imports of those goods from an individual country of export and in respect of which an investigation under the Act has not been terminated, during a representative period within the period beginning 90 days before the date of initiation of the investigation and ending on the date of the Commissioner's preliminary determination under subsection 38(1) of the Act, relative to a preceding representative period of comparable duration within the period of investigation;
- (b) whether the importer, producer or exporter of the dumped goods has a history of importing into Canada, or exporting into Canada, dumped goods in respect of which the Tribunal has made an order or finding that the dumping of the goods has caused injury or retardation or a threat of injury;
- (c) whether the authorities of a country other than Canada have determined that injury to the domestic industry of that country was caused by the dumping of goods of the

same description, or of similar goods, by an exporter of the goods that are under investigation;

- (d) whether there has been a significant increase in the volume of domestic inventories of the dumped or subsidized goods within a relatively short period of time; and
- (e) any other factors that are relevant in the circumstances. SOR/2002-67, s. 2.

*Expiry Review Factors*

**37.2** (1) In making a determination under paragraph 76.03(7)(a) of the Act, the Commissioner may consider

- (a) whether there has been dumping of goods while a finding or order in respect of the goods is in effect and, if applicable,
  - (i) the period during which the dumping occurred,
  - (ii) the volume and prices of the dumped and non-dumped goods,
  - (iii) the margin of dumping, and
  - (iv) for non-dumped goods, the amount by which the export prices exceed the normal values of the goods;
- (b) whether there has been subsidizing of goods while a finding or order in respect of the goods is in effect and, if applicable,
  - (i) the nature and duration of the foreign subsidy program in respect of the goods,
  - (ii) the period during which the subsidizing occurred,
  - (iii) the volume of the subsidized goods, and
  - (iv) the amount of subsidy;
- (c) the performance of the exporters, foreign producers, brokers and traders including, where applicable, in respect of production, capacity utilization, costs, sales volumes, prices, inventories, market share, exports and profits;
- (d) the likely future performance of the exporters, foreign producers, brokers and traders on the basis of factors, where applicable, such as production, capacity utilization, sales volumes, prices, inventories, market share, exports and profits;
- (e) the potential for the foreign producers to produce the goods in facilities that are currently used to produce other goods;
- (f) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods;
- (g) whether measures taken by the authorities of a country other than Canada are likely to cause a diversion of dumped or subsidized goods into Canada;

- (h) any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, in sources of imports into Canada, and in prices, market share and inventories;
  - (i) the imposition of anti-dumping or countervailing measures by authorities of Canada in respect of similar goods while an order or finding in respect of the goods was in effect; and
  - (j) any other factors that are relevant in the circumstances.
- (2) In making a determination under subsection 76.03(10) of the Act, the Tribunal may consider
- (a) the likely volume of the dumped or subsidized goods if the order or finding is allowed to expire, and, in particular, whether there is likely to be 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 likely prices of the dumped or subsidized goods if the order or finding is allowed to expire and their effect on the prices of like goods, and, in particular, whether the dumping or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred;
  - (c) the likely performance of the domestic industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits;
  - (d) the likely performance of the foreign industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits;
  - (e) the likely impact of the dumped or subsidized goods on domestic industry if the order or finding is allowed to expire, having regard to all relevant economic factors and indices, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital;
  - (f) the potential for the foreign producers to produce the goods in facilities that are currently used to produce other goods;
  - (g) the potential negative effects of the dumped or subsidized goods on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
  - (h) evidence of the imposition of anti-dumping or countervailing measures by the authorities in a country other than Canada in respect of goods of the same description or in respect of similar goods;
    - (i) whether measures taken by the authorities in a country other than Canada are likely to cause a diversion of the dumped or subsidized goods into Canada;

- (j) any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends and in sources of imports into Canada; and
- (k) any other factors relevant in the circumstances. SOR/2000-138, s. 6.

*Joining Investigations*

**38.** Subject to section 39, where the same goods, like goods or similar goods are

- (a) subject to more than one properly documented complaint, the properly documented complaints may be joined by the Commissioner for the purpose of initiating a single investigation;
- (b) subject to more than one preliminary inquiry, the preliminary inquiries may be joined by the Tribunal and carried out as one preliminary inquiry; or
- (c) subject to more than one dumping investigation or subsidy investigation, or one or more dumping investigations and one or more subsidy investigations, the investigations may be joined by the Commissioner and carried out as one investigation. SOR/96-255, s. 21; SOR/2000-138, s. 7.

**39.** Investigations may not be joined under paragraph 38(c) if a preliminary determination of dumping or subsidizing has been made in respect of any of those investigations. SOR/2000-138, s. 7.

**40.** (1) Where properly documented complaints are joined under paragraph 38(a), the Commissioner shall cause a notice of the joining to be given in writing to the complainants and the governments of the countries of export involved in the complaints.

(2) Where preliminary inquiries are joined under paragraph 38(b), the Tribunal shall cause a notice of the joining to be given in writing to the Commissioner and the importers, exporters, governments of the countries of export and complainants involved in the inquiries.

(3) Where investigations are joined under paragraph 38(c), the Commissioner shall cause a notice of the joining to be given in writing to the Secretary and the importers, exporters, governments of the countries of export and complainants involved in the investigations. SOR/2000-138, s. 7.

*Public Interest Inquiry*

**40.1** (1) A request referred to in subsection 45(1) of the Act shall be made in writing to the Secretary within 45 days after the issuance of an order or finding by the Tribunal under section 43 of the Act.

- (2) A request referred to in subsection 45(1) of the Act shall
  - (a) include the name, address for service, telephone number and, if any, the facsimile number and electronic mail address of the requester and of the requester's counsel, if any, and be signed by the requester or by the requester's counsel, if any;



- (b) include a statement of the public interest affected by the imposition of an anti-dumping or countervailing duty indicating the degree to which it is affected;
  - (c) include sufficient information as to whether the imposition of an anti-dumping or countervailing duty would not or might not be in the public interest;
  - (d) address all relevant factors, including, where applicable,
    - (i) the availability of goods of the same description from countries or exporters to which the order or finding does not apply,
    - (ii) the effect that the imposition of an anti-dumping or countervailing duty has had or is likely to have on competition in the domestic market,
    - (iii) the effect that the imposition of an anti-dumping or countervailing duty has had or is likely to have on producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,
    - (iv) the effect that the imposition of an anti-dumping or countervailing duty has had or is likely to have on competition by limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or by limiting access to technology,
    - (v) the effect that the imposition of an anti-dumping or countervailing duty has had or is likely to have on the choice or availability of goods at competitive prices for consumers, and
    - (vi) the effect that the non-imposition of an anti-dumping or countervailing duty, or the non-imposition of such a duty in the full amount provided for in sections 3 to 6 of the Act is likely to have on domestic producers of inputs, including primary commodities, used in the production of like goods; and
  - (e) include any other information that is relevant in the circumstances.
- (3) For the purposes of subsection 45(3) of the Act, the following factors are prescribed:
- (a) whether goods of the same description are readily available from countries or exporters to which the order or finding does not apply;
  - (b) whether imposition of an anti-dumping or countervailing duty in the full amount
    - (i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of goods,
    - (ii) has caused or is likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,
    - (iii) has significantly impaired or is likely to significantly impair competitiveness
- by
- (A) limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or

- (B) limiting access to technology, or
- (iv) has significantly restricted or is likely to significantly restrict the choice or availability of goods at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm;
- (c) whether non-imposition of an anti-dumping or countervailing duty or the non-imposition of such a duty in the full amount provided for in sections 3 to 6 of the Act is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like goods; and
- (d) any other factors that are relevant in the circumstances.

(4) Where, in relation to an inquiry, a person referred to in subsection 45(6) of the 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 and shall be filed with the Secretary within 21 days after the date of publication of the notice referred to in subsection 45(2) of the Act.

(5) A request made by a person under subsection (4) shall outline the person's interest in the inquiry and shall give the name, address for service, telephone number, and, if any, the facsimile number and electronic-mail address of the person and of the person's counsel, if any. SOR/2000-138, s. 7.

*Person Interested*

**41.** For the purpose of subsection 45(6) 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) engaged in the production or sale of any goods produced in Canada that are used in the production of like goods in relation to any goods that are the subject of an investigation;
- (e) acting on behalf of any person referred to in paragraph (d);
- (f) required or authorized by any Act of Parliament or of the legislature of a province to make representations to the Tribunal on the question referred to in subsection 45(6) of the Act;
- (g) a user of any goods that are like goods in relation to any goods that are the subject of an investigation; or
- (h) an association whose purpose is to advocate the interests of consumers in Canada. SOR/2000-138, s. 8.

**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 information, and the fees that are payable for the copying of information that is disclosed under subsection 84(3) of the Act, 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;
- (g) for personal computer magnetic diskette duplication, \$2 per diskette (all sizes); and
- (h) for compact disk duplication, \$20 per disk. SOR/89-578, s. 1; SOR/2000-138, s. 9.

*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). SOR/95-26, s. 13.

**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. SOR/89-63, s. 3.

**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, Customs and Trade Administration Branch, Canada Customs and Revenue Agency, Ottawa, Ontario K1A 0L5. SOR/89-63, s. 3; SOR/92-590, s. 3; SOR/95-26, s. 14; SOR/96-255, s. 24; SOR/2000-138, ss. 14, 15.

**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). SOR/89-63, s. 3; SOR/92-236, s. 6(E).

**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. SOR/89-63, s. 3.

**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. SOR/94-20, s. 3.

**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, Customs and Trade Administration Branch, Canada Customs and Revenue Agency, Ottawa, Ontario K1A 0L5. SOR/94-20, s. 3; SOR/95-26, s. 15; SOR/96-255, s. 24; SOR/2000-138, ss. 14, 15.

**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) 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 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). SOR/94-20, s. 3.

**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). SOR/94-20, s. 3.

**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. SOR/94-20, s. 3.

**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 acknowledgment 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, Customs and Trade Administration Branch, Canada Customs and Revenue Agency, Ottawa, Ontario K1A 0L5. SOR/95-26, s. 16; SOR/96-255, ss. 22, 24; SOR/2000-138, ss. 14, 15.

**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 Canada Customs and Revenue Agency of the region in which the goods are or are to be released. SOR/95-26, s. 16; SOR/2000-138, s. 15.

*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. SOR/95-26, s. 16.

**57.1** The Commissioner may refuse to consider representations referred to in subsection 49(5) of the Act after the period beginning on the day on which an undertaking is offered and ending nine days after that day. SOR/2000-138, s. 10.

*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. SOR/96-255, s. 23.

**[RELATED PROVISION:]**

**SOR/96-255:**

**25. Sections 1 to 18 apply in respect of the determination or redetermination of a normal value, export price, amount of subsidy or margin of dumping in relation to goods imported into Canada and released on or after July 1, 1996.]**

**Regulations Exempting Goods of Chile from the Application of Anti-dumping Measures**

SOR/97-326

Registration 5 July 1997

**SPECIAL IMPORT MEASURES ACT**

P.C. 1997-957 4 July 1997

His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to subsection 14(2)<sup>a</sup> of the *Special Import Measures Act*, hereby makes the annexed *Regulations Exempting Goods of Chile from the Application of Anti-dumping Measures*.

<sup>a</sup> S.C. 1997, c. 14, s. 89

**REGULATIONS EXEMPTING GOODS OF CHILE FROM THE  
APPLICATION OF ANTI-DUMPING MEASURES**

*EXEMPTION*

**1.** Goods of Chile that qualify as originating goods under the *CCFTA Rules of Origin Regulations* and that are entitled to the benefit of the Chile Tariff under the *CCFTA Tariff Preference Regulations* are exempt from the application of anti-dumping measures under the *Special Import Measures Act* as of the earlier of

- (a) the date on which the rate for all goods covered by the subheading that includes the tariff item under which the goods are classified is free under the *Customs Tariff* for goods of Chile that are originating goods and under the *Arancel Aduanero* for goods of Canada that are originating goods; and
- (b) 1 January 2003.

*COMING INTO FORCE*

**2.** These Regulations come into force on the day on which section 89 of the *Canada-Chile Free Trade Agreement Implementation Act*, chapter 14 of the Statutes of Canada, 1997, comes into force.

**Order Suspending Certain Provisions of the Special Import Measures Act**

P.C. 2001-109 23 January 2001

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to subsection 98(1)a of the *Special Import Measures Act*, hereby makes the annexed *Order Suspending Certain Provisions of the Special Import Measures Act*.

**ORDER SUSPENDING CERTAIN PROVISIONS OF THE  
SPECIAL IMPORT MEASURES ACT**

*SUSPENSIONS*

1. The application of the definition “arbitration body” and of paragraph (b) of the definition “non-actionable subsidy” in subsection 2(1) of the *Special Import Measures Act* is suspended with respect to all countries.
2. The application of the words “and subsection 31.1(1)” in subsection 31(6) of the Act is suspended with respect to all countries.
3. The application of section 31.1 of the Act is suspended with respect to all countries.

*COMING INTO FORCE*

4. This Order comes into force on the day on which it is registered.



**Canadian International Trade Tribunal Rules**

SOR/91-499

Registration 14 August 1991

**CANADIAN INTERNATIONAL TRADE TRIBUNAL ACT**

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 November 7, 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.

\* S.C. 1988, c. 65, s. 59 (E)

\*\* R.S., c. 47 (4th Supp.)

\*\*\* SOR/85-1068, 1985 *Canada Gazette* Part II, p. 4652

**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)

"address" includes an address for electronic transmission; (*adresse*)

"Agency" means the Canada Customs and Revenue Agency established by the *Canada Customs and Revenue Agency Act*; (*Agence*)

"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*)

"Commissioner" means the Commissioner of Customs and Revenue appointed under section 25 of the *Canada Customs and Revenue Agency Act*; (*commissaire*)

"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" [Repealed, SOR/2000-139, s. 1]

"document" includes any written documentation, film, photograph and audio tape and any information stored by electronic means; (*document*)

"electronic hearing" means a hearing held by telephone or video conference, or by any other electronic means by which parties can communicate with each other and the Tribunal orally; (*audience électronique*)

"electronic transmission" includes communication by fax or electronic mail or by any other electronic means by which parties can communicate; (*transmission électronique*)

"fax" [Repealed, SOR/2000-139, s. 1]

"Form" [Repealed, SOR/2000-139, s. 1]

"hearing by way of written submissions" means a hearing held by the exchange of documents; (*audience sur pièces*)

"interested party", in relation to an inquiry under section 42 or 45 of the *Special Import Measures Act* or a review under section 76.01, 76.02, 76.03 or 76.1 of that Act, means

- (a) the complainant, if any, under section 31 of that Act in the investigation in which the preliminary determination referred to in section 42 of that Act 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 their 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 intervention referred to in rule 39 or 40 and has been added as an intervener,
- (b) is permitted to intervene under an order of the Tribunal referred to in rule 42, or
- (c) is an interested party that has been granted leave of the Tribunal to intervene in any proceedings in relation to a complaint under section 30.17 of the Act; (*intervenant*)

"other interested party" has the same meaning as in section 3 of the *Canadian International Trade Tribunal Regulations*, (*autres intéressés*)

"party" means

- (a) in the case of an inquiry under section 42 or 45 of the *Special Import Measures Act* or a review under section 76.01, 76.02, 76.03 or 76.1 of that Act, an interested party who has filed a notice of participation in the inquiry or review, as the case may be, 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 sent under subrule 76(2) or rule 79, if the person has
  - (i) filed a notice of participation in accordance with these Rules, or
  - (ii) if no hearing is to be held in the proceeding, made a written submission to the Tribunal,
- (c) in the case of an appeal, the appellant, the respondent or an intervener,
- (d) in the case of a complaint under subsection 30.11(1) of the Act, the complainant, the government institution or an intervener, and
- (e) in the case of any other proceeding, a person who has an interest in the subject-matter of the proceeding and who has
  - (i) filed a notice of participation in that proceeding in accordance with these Rules, or
  - (ii) been given status by the Tribunal to be a party in that 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 Commissioner, 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*) SOR/93-601, s. 1; SOR/2000-139, s. 1.

## 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.

*Directions 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.** The Tribunal may dispense with, vary or supplement any of these Rules if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit. SOR/2000-139, s. 2.

*Combining of Proceedings*

**6.1** The Tribunal may, on its own initiative or on the written request of a party, combine two or more proceedings to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit. SOR/2000-139, s. 2.

*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.** If it is fair and equitable to do so, the Tribunal may extend or abridge the time limits fixed by these Rules or otherwise fixed by the Tribunal, either before or after their expiry. SOR/2000-139, s. 3.

*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*.

*Participation*

**10.** (1) A person who proposes to participate in a proceeding, other than a proceeding under Part II or Part X, shall file with the Tribunal a notice of participation on the relevant Tribunal form on or before the date that is specified in the notice published in the *Canada Gazette* under rule 54, 65, 71, 73.1, 73.5, 76, 78 or 85, as the case may be.

(2) If a person referred to in subrule (1) sets out, in the notice of participation, the name of the counsel by whom they will be represented, the counsel shall file with the Tribunal a notice of representation on the relevant Tribunal form on or before the date that is specified in the notice published in the *Canada Gazette* under rule 54, 65, 71, 73.1, 73.5, 76, 78 or 85, as the case may be. SOR/2000-139, s. 4.

*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 subrule (2) and 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 to the Secretary, by hand, mail or electronic transmission,

- (a) in the case of an appeal, the original and five copies of the document and the number of additional copies of it that the Secretary indicates are necessary for the Tribunal and all of the parties; and
  - (b) in all other proceedings, the original document and the number of copies of it that the Secretary indicates are necessary for the Tribunal and all of the parties.
- (2) A party may make a written request to the Tribunal to file a document as a single copy exhibit.
- (3) A document that is filed by electronic transmission shall include the following information on the first page:
- (a) the name, address and telephone and fax numbers of the sender;
  - (b) the date and time of the transmission;
  - (c) the total number of pages transmitted; and
  - (d) the name, address and telephone number of a person to contact if transmission problems occur.
- (4) When a document is filed by electronic transmission, the sender must immediately send to the Secretary the original document and the number of copies required under subrule (1).
- (5) Subject to subrule 31(3) and rule 96, the date of filing of a document is
- (a) where the document is filed by electronic transmission, the date of transmission; and

- (b) in any other case, the date on which the document is received by the Tribunal, as evidenced by the date stamped on the document by the Secretary. SOR/93-601, s. 2; SOR/2000-139, s. 5.

*Official and Other Languages*

**12.1** (1) Subject to subrule (2), all documents filed with the Tribunal must be in English or French.

(2) A person may file an original document in a language other than English or French if, at the same time, the person also files a translation of it in English or French and an affidavit attesting to the accuracy of the translation. If the document is required to be served, the translation and affidavit must be served at the same time. SOR/2000-139, s. 5.

*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) if a document is required to be served personally, the service shall be made
- (i) on an individual, by leaving a copy of it with the individual,
  - (ii) on a corporation, by leaving a copy of it with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to manage or be in control of the place of business, and
  - (iii) in any other case, in any manner that the Tribunal determines is just and equitable in the circumstances; and
- (b) if a document is not required to be served personally, the service shall be made at the address for service of the party.
- (2) [Repealed, SOR/2000-139, s. 6]
- (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 Commissioner, 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) The service of a document at an address for service shall be made
- (a) by sending it to the address for service by mail, by registered mail or by electronic transmission; or

- (b) by leaving it at the address for service.
- (5) A document that is served by electronic transmission shall include the following information:
  - (a) the name, address and telephone and fax numbers 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; 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 is
  - (a) if the document is served personally or by leaving it at the address for service, the date of delivery;
  - (b) if the document is served by mail or registered mail, the date that is five days after the earliest postal date appearing on the envelope containing the document; and
  - (c) if the document is served by electronic transmission, the date of the transmission.
- (7) If a document is required under these Rules to be served by a party or by direction of the Tribunal, the Tribunal may direct that a proof of service be filed with the Tribunal.
- (8) A proof of service of a document shall be made by showing
  - (a) an acknowledgement of service signed by or on behalf of the person served; or
  - (b) an affidavit of service stating the name of the person who served the document and the date, place and manner of service. SOR/2000-139, s. 6.

#### *Means of Transmission*

**13.1** Unless otherwise provided by these Rules or any other law, any sending, transmitting, notifying, servicing or filing may be done by hand, mail, registered mail or electronic transmission. SOR/2000-139, s. 7.

#### *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.** (1) If a person provides confidential information to the Tribunal under paragraph 46(1)(a) of the Act, the person shall file with the Tribunal a document marked "confidential" that contains all of the information and that identifies the portions that have been deleted from the non-confidential edited version or the non-confidential summary under paragraph 46(1)(b) of the Act, which edited version or summary shall also be filed with the Tribunal.

(2) Except for the purposes of Part II and Part X, the filing of the documents referred to in subrule (1) is completed when all of them have been filed, and, if they are filed on different dates, the date of filing is the date on which the most recent document is filed. SOR/2000-139, s. 8.

*Disclosure of Information to Counsel or to Expert*

**16.** (1) For the purpose of section 45 of the Act, a counsel for a party, other than a counsel who is not a resident of Canada or who is a director, servant or employee of the party, who wishes access to confidential information provided to the Tribunal shall provide the Tribunal with a declaration and undertaking on the relevant Tribunal form in respect of the use, disclosure, reproduction, protection and storage of the confidential information in the record of a proceeding, as well as that counsel's disposal of the confidential information at the close of the proceeding or in the event of a change of counsel.

(2) For the purpose of section 45 of the Act, a counsel for a party who is not a resident of Canada who wishes access to confidential information provided to the Tribunal shall provide the Tribunal with a declaration and undertaking on the relevant Tribunal form in respect of the use, disclosure, reproduction, protection and storage of the confidential information in the record of a proceeding, as well as that counsel's disposal of the confidential information at the close of the proceeding or in the event of a change of counsel.

(3) A person who is recognized by the Tribunal as an expert, who is acting under the control and direction of a counsel to whom confidential information has been disclosed and who wishes access to some or all of the confidential information shall provide the Tribunal with a declaration and undertaking on the relevant Tribunal form in respect of the use, disclosure, reproduction, protection and storage of the confidential information in the record of a proceeding, as well as that expert's disposal of the confidential information at the close of the proceeding or in the event of a change of expert.

(4) Any party or interested person may request, by way of notice of motion in accordance with rule 24, that the Tribunal not disclose some or all of the confidential information to a counsel or expert.

(5) The Tribunal shall notify counsel, including counsel referred to in subrule (2), and the expert, if any, of its decision whether or not to disclose the confidential information and on what terms and conditions such disclosure would be made, and, in the case of a decision not to disclose the information, the Tribunal shall serve its decision in writing, with reasons, on the counsel and the expert. SOR/2000-139, s. 8.

*Filing and Communication of Confidential Information*

**17.** Subject to any other provisions of these Rules, confidential information shall be filed with the Tribunal and may be served only by the Tribunal. SOR/2000-139, s. 8.



*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 that is relevant to 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 referred to in subrule (2), the Tribunal may direct that a pre-hearing conference be held if it determines that a pre-hearing conference would assist in the orderly conduct of the hearing.

(4) The Tribunal may conduct the pre-hearing conference in any manner that gives the parties or their counsel a fair opportunity to participate. SOR/2000-139, s. 9.

- (5) [Repealed, SOR/2000-139, s. 9]

*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 party may obtain a subpoena by making a request on the relevant Tribunal form that sets out the name, address and telephone and fax numbers of the party and of the person to be subpoenaed.

(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) When a subpoena is served on a person, the original copy of the subpoena shall be filed with the Tribunal forthwith, together with proof of service on the person. SOR/2000-139, s. 10.

### *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. SOR/2000-139, s. 11.

(2) and (3) [Repealed, SOR/2000-139, s. 11]

### *Experts*

**22.** (1) A party who intends to call an expert as a witness at a hearing shall, not less than 20 days before the hearing, file with the Secretary and serve on the other parties a report, signed by the expert, setting out the expert's name, address, qualifications and area of expertise and a detailed outline of the expert's testimony.

(2) A party on whom a copy of a report has been served and who wishes to rebut with expert evidence any matter set out in the report shall, not less than 10 days before 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.

(3) The report referred to in subrule (2) shall be signed by the expert and set out the expert's name, address, qualifications and area of expertise and a detailed outline of the expert's testimony. SOR/2000-139, s. 12.

### *Hearings*

**23.** (1) Subject to subrule (2), all of the hearings at which the parties or their counsel may appear before the Tribunal are public.

(2) The Tribunal may hold a hearing or any part of one *in camera*,

(a) on its own initiative or on the request of a party, for the purpose of receiving confidential information; or

- (b) on the request of a party in which the party establishes that the circumstances justify an *in camera* hearing.
- (3) When the Tribunal holds a hearing or part of one *in camera*, the hearing or part may be attended only by
- (a) a person who is to present confidential information and anyone whom the person requests be permitted to attend;
- (b) counsel for a party who has been granted access to confidential information under rule 16;
- (c) officers or employees of the Tribunal who have been directed to attend; and
- (d) any other person whom the Tribunal authorizes to attend.
- (4) A party who requires oral translation in any given language in order to participate in or have a witness testify at a hearing, other than at a hearing by way of written submissions, shall notify the Tribunal in writing of the requirement and of the language of translation, at least 30 days before the hearing.
- (5) The Tribunal may permit a party to provide their own oral translation in order to participate in or have a witness testify at a hearing, other than a hearing by way of written submissions, if the party makes a request in writing at least 30 days before the hearing and the Tribunal determines that the use of translation is fair and equitable in the circumstances. SOR/2000-139, s. 12.

#### *Requests for Decision or Order*

- 23.1** (1) A party may make a request to the Tribunal for a decision or order on any matter that arises in the course of a proceeding, other than in respect of a matter referred to in rule 33, 42 or 43.
- (2) The party who makes the request shall serve a copy of it on the other parties at the same time as it is filed with the Tribunal. SOR/2000-139, s. 12.

#### *Notice of Motion*

- 24.** (1) The Tribunal shall proceed by way of notice of motion if
- (a) it decides not to proceed by way of written request under rule 23.1; or
- (b) these Rules so specify.
- (2) A notice of motion shall be in writing and set out
- (a) a clear and concise statement of the facts, which must be accompanied by an affidavit if the Tribunal so directs; and
- (b) the decision or order sought and the grounds for seeking it.
- (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. SOR/2000-139, s. 13.

#### *Late Filing*

**24.1** (1) Except in the case of rule 33, if a party is unable or fails to file a notice, statement, report, subpoena, brief, response to a questionnaire or other document within the applicable time limit, the party may make a written request to the Tribunal for permission to file that document.

(2) A request under subrule (1) shall be made by filing the request and eight copies of it.

(3) The request must set out

(a) the relevance of the document; and

(b) the reasons why the document was not filed on time and why it should be accepted.

(4) The Tribunal may allow the document to be filed, in whole or in part, if it determines that to do so is fair and equitable in the circumstances.

(5) The Tribunal shall notify the parties of its decision under subrule (4). SOR/2000-139, s. 14.

#### *Type of Hearing*

**25.** Unless otherwise required by these Rules, the Tribunal may decide to proceed by

(a) way of a hearing at which the parties or their counsel appear before the Tribunal;

(b) way of electronic hearing;

(c) way of a hearing by way of written submissions; or

(d) any combination of the ways referred to in paragraphs (a) to (c). SOR/2000-139, s. 14.

#### *Hearing by Way of Written Submissions*

**25.1** When the Tribunal decides to hold a hearing by way of written submissions, the Tribunal shall publish a notice to that effect and 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; and
- (c) invite submissions from any party or any person who may have an interest in the matter. SOR/2000-139, s. 14.

#### *Electronic Hearing*

**25.2** When the Tribunal decides to proceed by way of an electronic hearing, the Tribunal shall publish in the *Canada Gazette* a notice of hearing and send a copy to the known parties before the hearing. SOR/2000-139, s. 14.

#### *Postponements and Adjournments of Hearings*

**26.** (1) The Tribunal may, on its own initiative or on the request of a party, postpone or adjourn a hearing, and, in determining whether to grant the request, the Tribunal shall consider, in addition to any other relevant factors, whether a similar issue is being considered before another court whose determination could impact on the matter being heard, whether any prejudice would result if the postponement or adjournment were granted or not granted and whether a postponement or adjournment would unreasonably delay or impede the proceedings.

(2) A request for a postponement shall be made at least 10 days before the hearing and shall set out the reasons for the postponement.

(3) The Tribunal shall notify the parties of its decision under subrule (1). SOR/2000-139, s. 14.

#### *Communication of Information*

[SOR/2000-139, s. 15(F); SOR/2002-402, s. 1(F)]

**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) If the Tribunal makes a decision, declaration, determination, recommendation, order, finding or other ruling in a proceeding, the Secretary shall, forthwith after it is made, send, subject to paragraph 43(2)(a), subparagraphs 76.01(6)(a)(i) and 76.02(5)(a)(i) and subsections 76.03(5) and (6) of the *Special Import Measures Act*, a copy of it, to each party and to each person who was provided with a notice of commencement of the proceeding.

(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) If the Secretary is required by paragraph 43(2)(b), subparagraph 76.01(6)(a)(ii) or 76.02(5)(a)(ii) or subsection 76.03(5) 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), paragraph 76.01(6)(a) or 76.02(5)(a) or subsection 76.03(5) or (6) of that Act, as the case may be, the

Secretary shall also send a copy of the reasons to every other person who was provided with a notice of commencement of the proceeding. SOR/2000-139, s. 16.

*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;
- (b) decide the matter in issue on the basis of the information on the record; or
- (c) make any order that it considers just and equitable in the circumstances, including a dismissal order. SOR/2000-139, s. 17.

**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 Commissioner, 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) sections 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. SOR/2000-139, s. 18.

*Commencement of Appeal*

**31.** (1) An appeal to the Tribunal shall be commenced by filing a notice of appeal

- (a) with the Commissioner 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) The notice of appeal 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.

(3) If the notice of appeal is filed by mail, the date of filing is the earliest postal date appearing on the envelope containing the document, and, in the absence of a proof of mailing, the date of filing is the date on which the document is received by the Tribunal, as evidenced by the date stamped on the document by the Secretary. SOR/2000-139, s. 19.

#### *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 on the relevant Tribunal form. SOR/2000-139, s. 20.

#### *Brief*

**34.** (1) The appellant shall, within 60 days after filing a notice of appeal under rule 31, file with the Secretary a brief prepared in accordance with subrules (2) and (3) and, subject to rule 17, forthwith serve 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 any other information relating to the appeal that the Tribunal requires; 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.
- (3) An appellant who intends to rely at the hearing
- (a) on any documents or authorities that were not previously filed with the Tribunal as part of a brief shall, not less than 10 days before the hearing, file them with the Secretary, and subject to rule 17, serve them on the other parties; and
  - (b) on any physical exhibit shall, not less than 10 days before the hearing, file it with the Secretary and notify the other parties of the filing. SOR/2000-139, s. 21.

*Response*

**35.** (1) The respondent shall, within 60 days after the service of the appellant's brief under rule 34, file with the Secretary a response prepared in accordance with subrules (2) and (3) and, subject to rule 17, forthwith serve a copy of the brief 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 any other information relating to the appeal that the Tribunal requires; 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.
- (3) A respondent who intends to rely at the hearing



- (a) on any documents or authorities that were not previously filed with the Tribunal as part of a response shall, not less than 10 days before the hearing, file them with the Secretary and, subject to rule 17, serve them on the other parties; and
- (b) on any physical exhibit shall, not less than 10 days before the hearing, file it with the Secretary and notify the other parties of the filing. SOR/2000-139, s. 22.

*Written Submission and Documentary Evidence*

**36.** The Tribunal may, at any time, direct a party to file with the Tribunal any written submissions, documents or evidence relating to an appeal. SOR/2000-139, s. 23.

*Hearing by Way of Written Submissions*

**36.1** If, on the Tribunal's own initiative or on the written request of a party, the Tribunal decides to hold a hearing by way of written submissions, the Tribunal shall publish a notice of hearing in the *Canada Gazette* that

- (a) includes the manner and time for the filing of briefs by the parties; and
- (b) if appropriate, requires the appellant and respondent to file an agreed statement of any relevant facts. SOR/2000-139, s. 23.

*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, in writing, all of the parties to the appeal and their counsel. SOR/2000-139, s. 24.

*Notice of Intervention 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 by filing with the Secretary a notice of intervention on the relevant Tribunal form. SOR/2000-139, s. 24.

*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 on the relevant Tribunal form. SOR/2000-139, s. 24.

*Notice of Intervention*

- 40.1** A person who files a notice of intervention referred to in rule 39 or 40 shall specify
- (a) the nature of their interest in the appeal;
  - (b) the reason why their intervention is necessary;

- (c) how the person may assist the Tribunal in the resolution of the appeal; and
- (d) any other relevant matters. SOR/2000-139, s. 24.

*Party Added*

**41.** (1) If a person has filed a notice of intervention under rule 39 or 40 and the Tribunal determines that, in the interests of fairness and equity, the parties to the appeal should be given an opportunity to make representations in respect of the intervention, the Secretary shall serve a copy of the notice on every person who is a party when the notice is filed.

(2) If the Tribunal determines that the person referred to in subrule (1) shall be added as an intervener, the Secretary shall send a written notice to that effect to the other parties 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. SOR/2000-139, s. 25.

*Intervention under Section 81.34 of the Excise Tax Act*

**42.** (1) An application referred to in subsection 81.34(1) of the *Excise Tax Act* for an order permitting a person to intervene in an appeal may be made on the relevant Tribunal form.

(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. SOR/2000-139, s. 26.

*Assistance under Subsection 81.34(2) of the Excise Tax Act*

**43.** An 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 on the relevant Tribunal form. SOR/2000-139, s. 27.

*Discontinuance*

**44.** 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 with the Secretary a notice of discontinuance on the relevant Tribunal form and by serving forthwith a copy of it on the other parties to the appeal. SOR/2000-139, s. 27.

*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) When a matter is referred back to the Tribunal by the Federal Court for re-hearing under subsection 68(2) of the *Customs Act* or for re-hearing under 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 that sets 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) any other information that is relevant to the re-hearing that the Tribunal specifies.

(2) The Secretary shall send a copy of the notice referred to in subrule (1) to each party to the appeal.

(3) After the publication of the notice 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 submissions;
- (d) the date of the re-hearing; and
- (e) any other matter respecting the procedure to be followed in the re-hearing that would aid in its orderly conduct. SOR/2000-139, s. 28.

### **PART III**

#### **REFERENCES UNDER SUBSECTION 33(2) OF THE SPECIAL IMPORT MEASURES ACT**

##### *Application*

**48.** This Part applies to a reference made to the Tribunal under subsection 33(2) of the *Special Import Measures Act*. SOR/2000-139, s. 28.

##### *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 Commissioner*

**50.** Where a reference is made by a government or by a person other than the Commissioner, the Secretary shall forthwith give to the Commissioner written notice of the reference of the question to the Tribunal. SOR/2000-139, s. 29.

##### *Information to be Filed by the Commissioner*

**51.** Where a reference is made in relation to any matter before the Commissioner, the Commissioner shall file with the Tribunal

- (a) any written complaint made to the Commissioner 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 Commissioner when the Commissioner 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 Commissioner as a result of which the question was referred to the Tribunal. SOR/2000-139, s. 29.

*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 Commissioner and to every person and government named in the list referred to in paragraph 51(c).

(3) If the Tribunal terminates a proceeding under paragraph 35.1(1)(b) or, if applicable, 35.1(1)(c) of the *Special Import Measures Act*, the Secretary shall give notice of the termination to the Commissioner and to every person and government named in the list referred to in paragraph 51(c).

SOR/97-325, s. 1; SOR/2000-139, s. 30.

**PART III.1**

**PRELIMINARY INQUIRIES UNDER SUBSECTION 34(2) OF  
THE SPECIAL IMPORT MEASURES ACT**

*Application*

**52.1** This Part applies to a preliminary injury inquiry conducted by the Tribunal under subsection 34(2) of the *Special Import Measures Act* as a consequence of the receipt by the Secretary of a notice of an initiation of an investigation of dumping or subsidizing in respect of goods.

SOR/2000-139, s. 31.

*Notice of Commencement of Preliminary Inquiry*

**52.2** When a notice of initiation of an investigation of dumping or subsidizing is filed with the Secretary, the Secretary shall forthwith cause to be published in the *Canada Gazette* a notice of commencement of a preliminary inquiry that sets out the following information:

- (a) the statutory authority for the inquiry;
- (b) the subject-matter of the inquiry;
- (c) the date on or before which an interested party must file a notice of participation;
- (d) the date on or before which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (e) the date on or before which any written submissions 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 preliminary inquiry may be obtained; and

- (i) any other information that is relevant to the preliminary injury inquiry that the Tribunal specifies. SOR/2000-139, s. 31.

*Sending of a Notice of Commencement of Preliminary Inquiry*

**52.3** The Secretary shall send a copy of a notice of commencement of preliminary inquiry referred to in rule 52.2 to

- (a) the Commissioner;
- (b) all of the persons known to the Tribunal to be interested parties; and
- (c) the government of any country from which goods in respect of which the initiation of a dumping or subsidizing investigation was made were exported to Canada. SOR/2000-139, s. 31.

*Information to be Filed by the Commissioner*

**52.4** When the Commissioner causes an investigation to be initiated respecting the dumping or subsidizing of goods under section 31 of the *Special Import Measures Act*, the Commissioner shall cause to be filed with the Secretary, in addition to the notice required to be given under paragraph 34(1)(a) of that Act,

- (a) a copy of the Commissioner's statement of reasons for initiating the investigation;
- (b) a copy of both the public and, if applicable, confidential version of the written complaint made to the Commissioner under subsection 31(1) of the *Special Import Measures Act*; and
- (c) any other relevant information that has been taken into consideration by the Commissioner. SOR/2000-139, s. 31; SOR/2002-402, s. 2(E).

**52.5** When the Tribunal terminates a proceeding under paragraph 35.1(1)(b) of the *Special Import Measures Act*, the Secretary shall give notice of the termination to the Commissioner and to every person and government referred to in rule 52.3. SOR/2000-139, s. 31.

## **PART IV**

### **INQUIRIES UNDER SECTION 42 OF THE SPECIAL IMPORT MEASURES ACT**

*Application*

**53.** This Part applies to an inquiry in respect of injury or retardation or threat of injury, made by the Tribunal under 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. SOR/2000-139, s. 32.

*Notice of Commencement of Inquiry*

**54.** If a notice of a preliminary determination of dumping or subsidizing is filed with the Secretary under the *Special Import Measures Act*, the Secretary shall forthwith cause to be published in the *Canada Gazette* a notice of commencement of inquiry that sets out the following information:

- (a) the statutory authority for the inquiry;
- (b) the subject-matter of the inquiry, together with any other relevant details of the inquiry that the Tribunal directs;
- (c) the date on or before which an interested party must file a notice of participation;
- (d) the date on or before which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (e) the date on or before which an interested person may file written representations under subsection 45(6) of that Act;
- (f) the date on or before which any written submissions 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 the commencement of a hearing in the inquiry; and
- (k) any other information that is relevant to the inquiry that the Tribunal specifies. SOR/2000-139, s. 32; SOR/2002-402, s. 3(E).

*Sending of a Notice of Commencement of Inquiry*

**55.** The Secretary shall send a copy of a notice of commencement of inquiry referred to in rule 54 to

- (a) the Commissioner;
- (b) all of the persons known by the Tribunal to be interested parties; and
- (c) the government of any country from which goods in respect of which the preliminary determination was made were exported to Canada. SOR/2000-139, s. 32.

*Information to be Filed by the Commissioner--Preliminary Determination*

**56.** Where the Commissioner makes a preliminary determination of dumping or subsidizing with respect to goods pursuant to section 38 of the *Special Import Measures Act*, the Commissioner 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 Commissioner 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 Commissioner, and
  - (ii) the volume of the goods imported into Canada and the proportion of those goods found by the Commissioner 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 Commissioner's possession and as the Tribunal may from time to time request. SOR/2000-139, s. 32.

*Information to be Filed by the Commissioner--Final Determination*

**57.** Where the Commissioner makes final determination of dumping or subsidizing with respect to goods pursuant to section 41 of the *Special Import Measures Act*, the Commissioner 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 estimates and of all things specified by the Commissioner 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 Commissioner, and
  - (ii) the volume of the goods imported into Canada and the proportion of those goods found by the Commissioner 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 Commissioner's possession and as the Tribunal may from time to time request. SOR/2000-139, s. 32; SOR/2002-402, s. 4(E).

*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 an inquiry, the Secretary shall, after the expiry of the date on or before which interested parties are required to file a notice of participation, make available, in the manner that the Tribunal directs,

- (a) to each counsel who has filed a declaration and undertaking referred to in subrule 16(1) or (2) 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) 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. SOR/2000-139, s. 33.

*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) written submissions, documents or evidence relating to the inquiry;
- (b) a statement of the evidence adduced or to be adduced by the party; and
- (c) a description of any exhibit in other than documentary form that the party intends to adduce at the inquiry.

(2) In the case of an inquiry under section 31 of the *Special Import Measures Act*, the date fixed for the filing of the material referred to in subrule (1) by any party other than the complainant or other person referred to in that section shall be later than the date fixed under that subrule for the filing of the material by the complainant or other person. SOR/2000-139, s. 33.

*Information to be Provided by Parties*

**61.** In considering an issue of injury or retardation or threat of injury, the Tribunal may at any time direct a party to an inquiry to produce information that relates to the factors prescribed by section 37.1 of the *Special Import Measures Regulations*. SOR/2000-139, s. 33.

*Request for Information*

**61.1** (1) In this rule, a request for information includes a request for the production of a document.

- (2) A party may direct a request for information to any other party.
- (3) A party that makes a request for information shall file the request with the Tribunal and serve it on the other parties within any time that the considerations of fairness and efficiency permit and that the Tribunal may direct.
- (4) A request for information shall

- (a) be in writing;
- (b) set out the name of the party to whom it is addressed;
- (c) number each request for information consecutively;
- (d) explain how the request is relevant or necessary to the proceeding; and
- (e) be dated.

(5) If the party to whom the request is addressed refuses to give some or all of the information requested, that party must, within any time that the considerations of fairness and efficiency permit and that the Tribunal may direct,

- (a) if the party contends that some or all of the information requested is not relevant or necessary, give reasons in support of that contention;
- (b) if the party contends that some or all of the information requested is not available, give reasons for its unavailability and provide any other available information or documents that are of the same nature and to the same effect as the requested information; and
- (c) if the party makes any other contention, including a contention based on criteria referred to in paragraphs (7)(c) to (f), give reasons in support of that contention.

(6) The Tribunal may, on its own initiative or on the request of a party, refuse the request or grant all or part of it on the basis of criteria set out in subrule (7).

(7) For the purpose of subrule (6), the Tribunal shall take the following criteria into account:

- (a) the relevance and necessity of the information requested;
- (b) any contentions referred to in subrule (5);
- (c) the sufficiency of the information already on the record;
- (d) the availability of the information from other sources;
- (e) the ability or inability of the party to respond; and
- (f) any other matter relevant to the request.

(8) If the Tribunal orders the party to whom the request is addressed to provide some or all of the information requested, the party shall, within any time that the considerations of fairness and efficiency permit and that the Tribunal may direct,

- (a) serve on the other party
  - (i) a full and adequate response, in writing, for each question in the request,
  - (ii) a signed declaration that the responses are complete and correct to the best of the information and belief of the party providing the response, and

- (iii) the information requested, or copies of it; and
  - (b) file with the Tribunal copies of the responses and information in the number that the Secretary indicates are necessary for the Tribunal and the interested parties.
- (9) A party to whom a request for information is directed complies with the order of the Tribunal if the party indicates to the other party which of its records contain the relevant information and
- (a) the party specifies in sufficient detail where the information may be found;
  - (b) the burden of obtaining the information is substantially the same for either party; and
  - (c) the party directing the request is given a reasonable opportunity to examine the records and make copies or summaries of them.
- (10) If a party files a response or documents that contain confidential information, the party who provides the confidential information shall, within any time that the considerations of fairness and efficiency permit and that the Tribunal may direct, file a non-confidential edited version or a non-confidential summary of the response in accordance with paragraph 46(1)(b) of the Act.
- (11) If a party to whom a request for information is directed does not comply with this rule, the party who directed the request for information may request the Tribunal to order compliance.

SOR/2000-139, s. 33; SOR/2002-402, s. 5(F).

*Notice of Matters Arising*

**61.2** (1) A party who wishes to have supplementary information relating to submissions, evidence and responses to requests for information that are filed with the Tribunal by another party shall serve a notice on all of the parties before the start of a hearing, within the period that the Tribunal may direct, to have the other party answer questions or provide documents or other information at the hearing concerning the matters arising from the material filed.

- (2) A party who makes a request shall file the notice with the Tribunal.
- (3) The notice shall
  - (a) be in writing;
  - (b) identify the party who will be required to answer questions or bring specified documents or information;
  - (c) number each matter consecutively;
  - (d) specify the information or documents requested, with an explanation of how they are relevant or necessary to the proceeding; and
  - (e) be dated.

(4) The Tribunal shall notify the parties in writing on which matters they must be prepared to answer questions at the hearing and specify which documents, if any, that they must be prepared to bring with them to the hearing. SOR/2000-139, s. 33.

*Information to be Filed by the Secretary -- Advice under Section 46 of Special Import Measures Act*

**62.** When the Tribunal advises the Commissioner under section 46 of the Special Import Measures Act, the Secretary shall cause to be filed with the Commissioner, in addition to the written notice referred to in that section, a copy of the information relied on by the Tribunal in giving its advice. SOR/2000-139, s. 33.

**63.** [Repealed, SOR/2000-139, s. 33]

**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 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*. SOR/2000-139, s. 34.

*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 V.1**

**PUBLIC INTEREST INQUIRY UNDER SECTION 45 OF  
THE SPECIAL IMPORT MEASURES ACT**

*Notice of Commencement of Inquiry*

**68.1** (1) If a public interest inquiry is initiated arising out of a finding of injury as a result of an inquiry referred to in section 42 of the *Special Import Measures Act*, the Secretary shall forthwith cause to be published in the *Canada Gazette* a notice of commencement of inquiry that sets out the following information:

- (a) the statutory authority for the inquiry;
- (b) the subject-matter of the inquiry, together with any other relevant details of the inquiry that the Tribunal directs;
- (c) the date on or before which an interested party or interested person must file a notice of participation;
- (d) the date on or before which counsel for an interested party or interested person, if any, must file a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (e) the date on or before which any written submissions 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 date, place and time fixed for the commencement of a hearing in the inquiry; and
  - (i) any other information that is relevant to the inquiry that the Tribunal specifies.

(2) The Secretary shall send a copy of a notice of commencement of inquiry referred to in subrule (1) to

- (a) the Commissioner;
- (b) all of the persons known by the Tribunal to be interested parties or interested persons; and
- (c) the government of any country from which goods in respect of which the final determination was made were exported to Canada. SOR/2000-139, s. 35; SOR/2002-402, s. 6(E).

*Information to be Provided by the Secretary*

**68.2** The Secretary shall, forthwith after the expiry of the date on or before which interested parties or interested persons are required to file a notice of participation or counsel for them is required to file a notice of representation, provide each counsel and, where an interested party or interested person is not represented by counsel, that interested party or interested person, with the following information:

- (a) the names and addresses of all parties and interested persons to the inquiry and their counsel, if any; and
- (b) the procedure for the filing of documents. SOR/2000-139, s. 35.

*Written Submissions and Documentary Evidence*

**68.3** The Tribunal may at any time direct any party or interested person to a public interest inquiry to file with the Tribunal, on or before a date fixed by the Tribunal, the following material:

- (a) written submissions, documents or evidence relating to the inquiry;
- (b) a statement of the evidence adduced or to be adduced by the party or interested person; and
- (c) a description of any exhibit in other than documentary form that the party or interested person intends to adduce at the inquiry. SOR/2000-139, s. 35.

*Additional Information to be Provided by Parties or Interested Persons*

**68.4** The Tribunal may at any time direct a party or interested person to a public interest inquiry to produce any additional information that relates to any factors or that it considers relevant to the inquiry. SOR/2000-139, s. 35.

**PART VI**

**REVIEWS UNDER SECTIONS 76.01, 76.02, 76.03 AND 76.1  
OF THE SPECIAL IMPORT MEASURES ACT**

*Application*

- 69.** This Part applies in respect of a review of an order or finding by the Tribunal
- (a) under subsection 76.01(1), 76.02(1) or 76.03(3) of the *Special Import Measures Act*, whether on the Tribunal's own initiative or at the request of the Commissioner or any other person or of any government;
  - (b) under subsection 76.02(3) of that Act, if the order or finding is referred back to the Tribunal under an order made by a panel under subsection 77.015(3) or (4), 77.019(5), 77.15(3) or (4) or 77.19(4) of that Act; or
  - (c) under subsection 76.1(2) of that Act. SOR/2000-139, s. 36.

*Review under Section 76.01 or 76.02 of the Special Import Measures Act*

**70.** (1) A request by a person to the Tribunal for a review under subsection 76.01(1) or 76.02(1) of the *Special Import Measures 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 their counsel, if any;
- (b) the nature of their 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 under subsection 76.01(5) or 76.02(4) of the *Special Import Measures Act* on completion of the review.

(2) On receipt of a properly documented request referred to in subrule (1), the Tribunal shall inform each party to the inquiry or review that resulted in the order or finding of its receipt of the request and shall give them an opportunity to make representations to the Tribunal concerning the request. SOR/2000-139, s. 36.

**71.** (1) If the Tribunal decides to review an order or a finding under subsection 76.01(1) or 76.02(1) of the *Special Import Measures Act*, the Secretary shall forthwith cause to be published in the *Canada Gazette* a notice of review that sets out the following information:

- (a) the statutory authority for the review;
- (b) the subject-matter of the review, together with any other relevant details of the review that the Tribunal directs;
- (c) the date on or before which an interested party must file a notice of participation;
- (d) the date on or before which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (e) the date on or before which any written submissions 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; and
- (i) the place and time fixed for commencement of a hearing in the review.

(2) The Secretary shall send 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 of commencement of inquiry if the review were an inquiry referred to in rule 53. SOR/2000-139, s. 36; SOR/2002-402, s. 7(E).

**72.** In order to decide whether an interim review under section 76.01 of the *Special Import Measures Act* is warranted, the Tribunal may request the parties to provide information concerning

- (a) whether changed circumstances or new facts have arisen since the making of the order or finding;
- (b) facts that were not put in evidence in the original proceedings and that were not discoverable by the exercise of reasonable diligence; and
- (c) any other matter that is relevant to the review. SOR/2000-139, s. 36.

**73.** When the Tribunal makes an order or a finding under subsection 76.01(5) or 76.02(4) of the *Special Import Measures Act*, the Secretary shall

- (a) send a copy of the order or finding and the reasons for the decision to each party and to each person who was provided with the notice of review; and
- (b) cause a notice of it to be published in the *Canada Gazette* in accordance with the appropriate subsection of that Act. SOR/2000-139, s. 36.

*Review under Section 76.03 of the Special Import Measures Act*

**73.1** (1) When an order or a finding is deemed to be rescinded on the expiry of a five-year period in accordance with subsection 76.03(1) of the *Special Import Measures Act*, the notice of expiry that the Secretary must cause to be published in the *Canada Gazette* in accordance with subsection 76.03(2) of that Act shall set 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 submissions must be filed by any person or government 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; and
  - (e) the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the expiry may be obtained.
- (2) After the publication of a notice of expiry 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 under subsection 76.03(3) of the *Special Import Measures Act*, advise the interested parties of that decision;
  - (b) if it makes an order not to initiate a review under subsection 76.03(5) of that Act, ask the Secretary to cause a notice of that order to be published in accordance with that subsection; or
  - (c) if it decides to initiate a review, ask the Secretary to publish a notice of review in the *Canada Gazette* that sets out the information specified in subrule 71(1).



(3) The Secretary shall send a copy of a notice of expiry or a notice of review, as the case may be, to each person to whom and government to which the Secretary would be required by rule 55 to send a copy of the notice of commencement of inquiry if the review were an inquiry referred to in rule 53. SOR/2000-139, s. 36.

**73.2** In order to decide whether an expiry review under section 76.03 of the *Special Import Measures Act* is warranted, the Tribunal may request the parties to provide information that addresses the following:

- (a) the likelihood of a continuation or resumption of dumping or subsidization of the goods;
- (b) the likely volume and price ranges of dumped or subsidized imports if dumping or subsidization were to continue or resume;
- (c) the domestic industry's recent performance, including trends in production, sales, market share and profits;
- (d) the likelihood of injury to the domestic industry if the order or finding were allowed to expire, having regard to the anticipated effects of a continuation or resumption of dumped or subsidized imports on the industry's future performance;
- (e) any other developments affecting, or likely to affect, the performance of the domestic industry;
- (f) changes in circumstances, domestically or internationally, including changes in the supply or demand for the goods, and changes in trends in, and sources of, imports into Canada; and
- (g) any other matter that is relevant to the review. SOR/2000-139, s. 36.

**73.3** If the Commissioner determines under subsection 76.03(9) of the *Special Import Measures Act* that the expiry of the order or finding is likely to result in a continuation or resumption of dumping or subsidizing, the Commissioner shall cause to be filed with the Secretary, in addition to the notice of determination that must be provided under paragraph 76.03(7)(b) of that Act,

- (a) the reasons for the determination;
- (b) information relating to the enforcement of the Tribunal's order or finding and, in particular, to the extent available, the total volume and value of the imports and the volume and value of the dumped or subsidized imports and undumped or unsubsidized imports; and
- (c) any other information that has been taken into consideration by the Commissioner. SOR/2000-139, s. 36.

**73.4** If the Tribunal makes an order under subsection 76.03(12) of the *Special Import Measures Act*, the Secretary shall

- (a) send a copy of the order and reasons for it to each party and to each person who was provided with the notice of review; and

- (b) cause a notice of it to be published in the *Canada Gazette*. SOR/2000-139, s. 36.

*Review under Section 76.1 of the Special Import Measures Act*

**73.5** (1) If the Minister of Finance requests the Tribunal to review an order or a finding under subsection 76.1(1) of the *Special Import Measures Act*, the Secretary shall publish a notice of review in the *Canada Gazette* that sets out the information specified in subrule 71(1).

(2) The Secretary shall send 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 of commencement of inquiry if the review were an inquiry referred to in rule 53. SOR/2000-139, s. 36.

**73.6** If the Tribunal makes an order or a finding under subsection 76.1(2) of the *Special Import Measures Act*, the Secretary shall

- (a) send a copy of the order or finding and the reasons for the decision to each party and to each person who was provided with the notice of review; and
- (b) cause a notice of it to be published in the *Canada Gazette*. SOR/2000-139, s. 36.

*Application of Certain Rules*

**73.7** (1) Subject to subrule (2), rules 59 to 61.2 apply, with any modifications that the circumstances require, to a review under this Part.

(2) Rules 61.1 and 61.2 do not apply to a public interest inquiry under section 45 of the *Special Import Measures Act* or to a review under section 76.01, 76.02 or 76.1 of that Act. SOR/2000-139, s. 36.

**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 Commissioner 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. SOR/2000-139, s. 37.

*Notice of Request by Commissioner*

**75.** Where the Commissioner makes a request pursuant to subsection 89(1) of the *Special Import Measures Act*, the Commissioner

- (a) shall give notice of the request to
  - (i) each of the two or more persons referred to in that subsection,
  - (ii) where the Commissioner 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, addresses for service, telephone numbers and fax numbers, if any, of the persons given notice pursuant to paragraph (a). SOR/2000-139, s. 39.

*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 an interested person must file with the Tribunal a notice of participation, and
  - (iii) the date on or before which counsel for a person who files a notice of participation must file with the Tribunal a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (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 a copy of a notice of request for a ruling to the following persons:
  - (a) the Commissioner; and
  - (b) each person shown on the list referred to in paragraph 75(b). SOR/2000-139, s. 40.

*Request for Reconsideration*

**77.** A request to the Tribunal to reconsider, pursuant to paragraph 91(1)(g) 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 participation, and
- (iii) the date on or before which counsel for a person who files a notice of participation must file with the Tribunal a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (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. SOR/2000-139, s. 41.

*Sending of Notice*

**79.** The Secretary shall send 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 Commissioner;
- (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. SOR/2000-139, s. 42.

*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 59 and 60 apply, with any modifications that the circumstances require, to a request for a ruling that is referred to in subsection 89(1) of the *Special Import Measures Act* and any re-hearing in connection with a reconsideration by the Tribunal under paragraph 91(1)(g) of that Act.

SOR/2000-139, s. 43.

## PART VIII

### COMPLAINTS BY DOMESTIC PRODUCERS

#### *Application*

**82.** This Part applies in respect of a written complaint filed with the Tribunal under subsection 23(1), (1.01), (1.02), (1.03), (1.04), (1.05), (1.06) or (1.1) of the Act by a domestic producer of goods that are like or directly competitive with goods being imported into Canada, or by a person or an association acting on behalf of such a domestic producer. SOR/93-599, s. 1; SOR/97-67, s. 1; SOR/97-325, s. 2; SOR/2000-139, s. 44.

#### *Additional Information Accompanying a Written Complaint*

**83.** (1) 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;
- (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 names 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;
- (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 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,
  - (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 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.
  - (iii) [Repealed, SOR/95-13, s. 1]

(2) In addition to the information specified in subrule (1), information that is necessary to apply the factors set out in subsection 4(1) or (1.1) of the *Canadian International Trade Tribunal Regulations* shall be filed at the request of the Tribunal. SOR/93-599, s. 2; SOR/95-13, s. 1; SOR/2000-139, s. 45.

## PART IX

### REFERENCES UNDER SECTION 18, 19, 19.01, 19.011, 19.012, 19.1 OR 20 OF THE ACT

[SOR/93-599, s. 3; SOR/97-67, s. 2; SOR/97-325, s. 3]

#### *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 19.01, 19.011, 19.012 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, under the *Customs Tariff*, to the United States Tariff, the Mexico Tariff, the Mexico-United States Tariff, the Canada-Israel Free Trade Agreement Tariff or the Chile 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. SOR/93-599, s. 4; SOR/97-67, s. 3; SOR/97-324, s. 4; SOR/98-39, s. 1.

*Notice of Inquiry*

**85.** Where, pursuant to section 18, 19, 19.01, 19.011, 19.012, 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;
- (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;
- (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 must file with the Tribunal a notice of participation, and
- (iii) the date on or before which counsel for a person who files a notice of participation must file with the Tribunal a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (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
- (h) such other information as the Tribunal specifies. SOR/93-599, s. 5; SOR/97-67, s. 4; SOR/97-325, s. 5; SOR/2000-139, s. 46.

*Sending of Notice*

- 86.** The Secretary shall send 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. SOR/2000-139, s. 47.

*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 any modifications that the circumstances require, to an inquiry conducted by the Tribunal in connection with a standing reference to which this Part applies. SOR/2000-139, s. 48.

**PART X**

**REFERENCES UNDER SECTION 19 AND REVIEWS UNDER  
SECTION 19.02 OF THE ACT**

*Application*

- 89.** This Part applies in respect of
- (a) a standing reference made to the Tribunal under section 19 of the Act by the Minister for inquiry and report into
    - (i) 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 designated in the List of Countries set out in the schedule 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 customs duty under section 33 of the *Customs Tariff*, or that originate in a country

designated in the List of Countries set out in the schedule to the *Customs Tariff* as a beneficiary of the Least Developed Country Tariff and that are being imported into Canada at the Least Developed Country Tariff rates of customs duty under section 37 of the *Customs Tariff*, are causing or threatening injury to that producer, or

- (ii) 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 designated in the List of Countries set out in the schedule to the *Customs Tariff* as a beneficiary of the Commonwealth Caribbean Countries Tariff and that are being imported into Canada at the Commonwealth Caribbean Countries Tariff rates of customs duty under section 41 of the *Customs Tariff*, are causing or threatening injury to that producer; and

- (b) a review made under section 19.02 of the Act. SOR/98-39, s. 2; SOR/2000-139, s. 48.

#### *Complaints by Producers*

**90.** (1) A written complaint by a domestic producer referred to in paragraph 89(a) 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) If the Tribunal determines that the information provided by the complainant and any other information examined by the Tribunal 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 paragraph 89(a), the Tribunal shall commence an inquiry into the complaint. SOR/2000-139, s. 49.

*Notice of Expiration*

**91.** If 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 paragraph 89(a) is scheduled to expire, the Secretary shall, in order for the Tribunal to receive and review written submissions that may be made by interested parties 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 expiry that sets 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. SOR/2000-139, s. 50.

*Application of Certain Rules*

**92.** Rules 59, 60 and 85 to 87 apply, with any modifications that the circumstances require, to an inquiry conducted by the Tribunal in connection with a standing reference to which this Part applies. SOR/2000-139, s. 51.

*Notice of Review Under Section 19.02 of the Act*

**92.1** If the Tribunal is required to conduct a mid-term review under section 19.02 of the Act, the Secretary shall cause to be published in the *Canada Gazette*, not later than five months before the review, a notice of mid-term review that sets out the following information:

- (a) the statutory authority for the review of the safeguard measure;
- (b) the date of the mid-point of the safeguard measure to be reviewed;
- (c) the subject-matter of the review;
- (d) the date on or before which a notice of participation or any written submissions must be filed;
- (e) the address of the Tribunal for the filing or service of documents and where information in respect of the review may be obtained; and
- (f) any other information that is relevant to the review that the Tribunal specifies. SOR/2000-139, s. 51.

*Sending of Notice of Mid-term Review*

**92.2** The Secretary shall send a copy of the notice of mid-term review referred to in rule 92.1 to each interested party. SOR/2000-139, s. 51.

*Disposal of Mid-term Review*

**92.3** A mid-term review referred to in rule 92.1 shall be decided on the basis of a hearing by way of written submissions unless the Tribunal, on its own initiative or on the written request of a party, decides to proceed by way of a hearing at which the parties or their counsel appear before the Tribunal or by way of an electronic hearing. SOR/2000-139, s. 51.

*Application of Certain Rules*

**92.4** Rules 59 and 60 apply, with any modifications that the circumstances require, to a review referred to in rule 92.1. SOR/2000-139, s. 51.

**PART XI**

**INQUIRIES INTO PROCUREMENT COMPLAINTS BY POTENTIAL SUPPLIERS**

*Interpretation*

**93.** In this Part

"send", in respect of a document, information or a notification, means to transmit by hand, registered mail or electronic transmission; (*envoyer*)

"working day" means a day that is not a Saturday or a holiday. (*jour ouvrable*) SOR/93-601, s. 3; SOR/2000-139, s. 52.

*Application*

**94.** This Part applies in respect of inquiries into complaints made by potential suppliers under subsection 30.11(1) of the Act. SOR/93-601, s. 3; SOR/2000-139, s. 53(E).

*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. SOR/93-601, s. 3.

*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) For the purpose of subrule (1), the day of receipt is the day stamped by the Secretary on the complaint or on the document containing the information that corrects the deficiencies. SOR/93-601, s. 3; SOR/2000-139, s. 54.

#### *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. SOR/93-601, s. 3.

#### *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. SOR/93-601, s. 3.

#### *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. SOR/93-601, s. 3.

#### *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. SOR/93-601, s. 3.

#### *Notification of Inquiry*

**101.** If 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 interested party and shall publish a notice of commencement of inquiry. SOR/93-601, s. 3; SOR/2000-139, s. 55; SOR/2002-402, s. 8(F).

*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. SOR/93-601, s. 3.

*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 limit set out in subrule (1), make a written request to the Tribunal for an extension of that time limit and shall set out in the application the reasons for the extension.

(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. SOR/93-601, s. 3; SOR/2000-139, s. 56.

#### *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 under subrule 103(3), file with the Tribunal comments on the statement or make a written request to have the case decided on the basis of 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) The Tribunal may extend the time limit for the filing of comments under subrule (1) if the complainant makes a written request for the extension within the time limit referred to in that subrule and the specific circumstances of the complaint warrant the extension. SOR/93-601, s. 3; SOR/2000-139, s. 57.

#### *Hearing of Complaints*

[SOR/2000-139, s. 58]

**105.** (1) The Tribunal may, in respect of the merits of a complaint, and on the written request of a party or on the Tribunal's own initiative, hold an electronic hearing or a hearing at which the parties or their counsel appear before the Tribunal.

(2) The request for a hearing shall be submitted as soon as possible during the course of the proceedings on the complaint.

(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 direct that a hearing be held if at any time during the proceeding it decides that a hearing is needed to clarify material issues. SOR/93-601, s. 3; SOR/2000-139, s. 59.

**106.** [Repealed, SOR/2000-139, s. 60]

#### *Express Option*

**107.** (1) When the complainant, the government institution or an intervener requests an expeditious determination of a complaint, the Tribunal shall consider the feasibility of using the express option procedure set out in subrule (5).

(2) The Tribunal may apply the express option in the case of any complaint that is suitable for resolution within 45 days.

(3) A request for the express option shall be made in writing and submitted to the Secretary not later than three days after a notice of inquiry is given under subsection 30.12(3) of the Act.

(4) The Tribunal shall determine whether or not to apply the express option within two days after receiving a request for it and shall notify the complainant, the government institution and all of the interveners of its determination.

(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 determining that the express option will be applied. SOR/93-601, s. 3; SOR/2000-139, s. 61.

#### *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. SOR/93-601, s. 3.

## **PART XII**

### **EXTENSION INQUIRIES UNDER SECTION 30.07 OF THE ACT**

#### *Application*

**109.** This Part applies in respect of an extension inquiry under section 30.07 of the Act. SOR/2000-139, s. 62.

#### *Notice of Expiry*

**110.** If the Tribunal is required to publish a notice of expiry under subsection 30.03(1) of the Act in respect of an order referred to in that subsection, the notice shall be published in the *Canada Gazette* not later than eight months before the expiry date and shall set out



- (a) the date on which the order is scheduled to expire;
- (b) the date on or before which written submissions must be filed by interested parties requesting or opposing an extension inquiry;
- (c) the address of the Tribunal for the filing or service of documents and where information in respect of the extension inquiry may be obtained;
- (d) the number of copies of each written submission that must be filed;
- (e) instructions in respect of the filing of confidential information; and
- (f) any other relevant information that the Tribunal may require. SOR/2000-139, s. 62.

*Request for Extension*

**111.** A request for an extension inquiry filed with the Tribunal shall be signed by the requester or by their counsel, if any, and, in addition to providing the information required by section 30.05 of the Act, shall be accompanied by the following information:

- (a) the name, address and telephone and fax numbers, if any, of the requester or their counsel;
- (b) the name and description of the imported goods and the like or directly competitive goods;
- (c) the names of the domestic producers on whose behalf the request is being made and the proportion of total domestic production of like or directly competitive goods that is produced by them;
- (d) any information that is necessary to address the matters raised in subsection 4(1) and section 6 or 7 of the *Canadian International Trade Tribunal Regulations* and subsection 30.03(2) of the Act, as the case may be; and
- (e) a statement indicating why the order that is the subject of the extension inquiry continues to be necessary to prevent or remedy serious injury to domestic producers of like or directly competitive goods. SOR/2000-139, s. 62.

**112.** If a notice is provided under subsection 30.06(3) of the Act, the Tribunal shall give the other interested parties referred to in that subsection an opportunity to make representations to the Tribunal concerning the request referred to in rule 111. SOR/2000-139, s. 62.

**113.** If the Tribunal decides to conduct an extension inquiry, the Secretary shall forthwith cause to be published in the *Canada Gazette* a notice to that effect that sets out the following information:

- (a) the statutory authority for the extension inquiry;
- (b) the subject-matter of the extension inquiry, together with any other relevant details of the extension inquiry that the Tribunal directs;
- (c) the date on or before which an interested party must file a notice of participation;

- (d) the date on or before which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1) or (2);
- (e) the date on or before which written submissions 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 of the Tribunal to which written submissions or correspondence may be sent or delivered and at which information in respect of the extension inquiry may be obtained;
- (i) the place and time fixed for the commencement of a hearing in the extension inquiry; and
- (j) any other information that is relevant to the extension inquiry that the Tribunal specifies. SOR/2000-139, s. 62; SOR/2002-402, s. 9(E).

*Application of Certain Rules*

**114.** Rules 59 and 60 apply, with any modifications that the circumstances require, in respect of an extension inquiry conducted by the Tribunal under this Part. SOR/2000-139, s. 62.

SCHEDULE

[Repealed, SOR/2000-139, s. 63]

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