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

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

**REPLIES TO QUESTIONS¹ POSED BY THE UNITED STATES
REGARDING THE NOTIFICATION OF CANADA²**

The following communication, dated 2 November 2018, is being circulated at the request of the Delegation of Canada.

Question 1

Will case files in scope and anti-circumvention proceedings be available to interested parties in the same manner as antidumping and countervailing duty investigations?

Reply:

Yes. Non-confidential information relating to a dumping or subsidy proceeding will be disclosed to any person on request. Confidential information will be disclosed to independent counsel who have a disclosure undertaking. For more information on Canada's disclosure provisions please visit: <https://www.cbsa-asfc.gc.ca/sima-lmsi/ig-ldi-eng.html>.

Question 2

Will preliminary determinations be issued in anti-circumvention or scope proceedings?

Reply:

Preliminary determinations will not be issued in these proceedings. During an anti-circumvention investigation and a scope proceeding, the Canada Border Services Agency (CBSA) will publish a non-confidential Statement of Essential Facts (SEF) on its website. This document will include the CBSA's preliminary assessment of whether the evidence discloses a reasonable indication of circumvention, or in the case of a scope proceeding, the preliminary assessment of whether the goods are subject to an anti-dumping and/or countervailing measure. The SEF also provides a summary of the facts that the CBSA relied on in making that preliminary assessment.

¹ G/ADP/Q1/CAN/18-G/SCM/Q1/CAN/18-G/SG/Q1/CAN/2.

² G/ADP/N/1/CAN/4/Suppl.2-G/SCM/N/1/CAN/4/Suppl.2-G/SG/N/1/CAN/3/Suppl.1 (dated 19 June 2018).

Question 3

Are there any time limits regarding the application for a scope ruling, or may an interested party apply for a scope ruling at any time after a measure is put into effect?

Reply:

Application can be made for a scope ruling at any time while the measure is in effect. There is no time limit.

Question 4

Section 75.1(3) of the Special Import Measures Act, as revised by the *Budget Implementation Act*, states that a decision setting out a finding of circumvention must specify: (a) the goods to which it applies and (b) the exporters and the exporting countries to which it applies. Please explain the form of any remedy for the circumvention. For example, if an anti-dumping measure is extended to imports found to be circumventing a measure, please explain if exporter-specific normal values are determined or if the imports are subject to a specified duty rate and how that rate is determined. Please also explain whether, and under what basis, there is a country-wide duty rate applied in addition to any exporter-specific normal values or duty rates determined.

Reply:

Normal values, export prices and/or amounts of subsidy are not calculated in an anti-circumvention investigation. Therefore, when an anti-dumping measure is extended to imports found to be circumventing a measure, normal values will initially be determined in accordance with information from the latest investigation or review (generally the "all others rate"). Exporters and importers can use other review mechanisms available under Canada's trade remedy system to update normal values and amounts of subsidy.

Subsection 72(2) of the *Special Import Measures Act* (SIMA) allows for an anti-circumvention investigation to be initiated in respect of an exporter or at a country level. Regardless of the approach taken at initiation, normal values will be determined in the manner outlined above.

Question 5

Can a party request a scope ruling prior to the export of goods for which a circumvention finding is requested?

Reply:

A party can request a scope ruling at any time. However, if there is a circumvention proceeding underway concerning the same goods, the CBSA may reject the request.

Question 6

With regard to interim reviews of circumvention findings provided for under Article 75.4, please explain:

a. The circumstances that would warrant an interim review;

Reply:

Interim Reviews provide a mechanism to examine whether it is still necessary to extend anti-dumping or countervailing duties to some or all of the goods that have previously been found to be circumventing the measure. An interim review will be initiated only where the President of the CBSA is satisfied that such a review is warranted.

While there are no prescribed criteria for making this decision, the following factors may be considered when determining whether a review is warranted:

- a) any change in the circumstances that led to the finding of circumvention;
- b) the time since the President's finding of circumvention;
- c) if applicable, the time since the last interim review decision;
- d) the volume of imports of the circumventing goods and any fluctuations in import volume;
- e) the timing of the next potential expiry review; and
- f) any other relevant consideration.

b. Whether requests for interim reviews under this Article are notified to interested parties or the public; and

Reply:

Where the President of the CBSA decides not to initiate a review, the CBSA will provide the decision and reasons to the person, Tribunal or government who made the request.

If a review is initiated, the CBSA will provide written notice to the exporters, importers, the government of the exporting country, the requester and the domestic producers.

c. Whether an interim review can be requested or conducted at any time following a circumvention finding, or if a period of time must elapse before an interim review can be requested or initiated.

Reply:

An interim review of a finding of circumvention or any aspect of this decision can be requested at any time.

Question 7

Section 57.12 of the *Amended Regulations* states that the three specified activities are "prescribed". Is this listing exclusive? In other words, does the authority have the ability to find an activity that is not expressly listed in Section 57.12 of the *SIMA Regulations* to be a "prescribed activity"? If so, please explain what precautions Canada takes to ensure that any duties that Canada imposes due to anticircumvention investigations concern articles for which its authority has made an injury determination.

Reply:

The prescribed activities referred to in section 57.12 of the *Special Import Measures Regulations* are exclusive.

Question 8

Section 57.21(1) of the *Amended Regulations* describes the information that must be contained in an exporter's request for an exemption from the extension of duties pursuant to a circumvention finding. Please explain the procedures that maybe used to verify the accuracy of the information.

Reply:

The CBSA will review the request for exemption in order to assess whether it is complete. Based on a review of information gathered in the anti-circumvention investigation and other prior proceedings, customs documentation, publicly available information or other relevant information the CBSA will evaluate the information contained in the request for exemption.

Provided the exporter submits a complete request, and the CBSA is satisfied that a review is warranted, the CBSA will initiate a review. Further verification of the information provided in the exemption request will take place after initiation.
