The anti-dumping section of the Canadian Customs Tariff Act (Section 6, paragraph 1) provides that all products imported into Canada at less than the fair market value - as determined under the provisions of the Customs Act - shall be charged with anti-dumping duties in so far as the other conditions laid down in the Customs Tariff Act for the application of such duties are fulfilled. The relevant valuation provisions of the Customs Act - which, therefore, are decisive for the application of anti-dumping duties - were revised by an Act which came into effect on 6 September 1956. The revised text of the relevant sections reads as follows:

Valuation for Ordinary Duty

"35. (1) The value for duty of goods imported shall be determined in accordance with the provisions of sections 36 to 40B.

(2) In this section and sections 36 to 40B, with reference to any goods,

(a) 'country of export' means the country from which the goods were shipped directly to Canada;

(b) 'cost of production' means an amount that in accordance with good business principles and practices fairly reflects the manufacturing or production costs of the goods at the time of shipment to Canada; and

1 Reproduced on page 58 of the GATT publication Anti-Dumping and Countervailing Duties.

2 This text replaces the previous valuation provisions reproduced in the GATT publication Anti-Dumping and Countervailing Duties, page 60.
(c) 'gross profit' means the fair market value of the goods when sold in the circumstances described in section 36, minus the cost of production thereof.

"36. Valuation for duty"

(1) Subject to section 38, the value for duty shall, notwithstanding any invoice or affidavit to the contrary, be the fair market value, at the time when and place from which the goods were shipped directly to Canada, of like goods when sold:

(a) to purchasers located at that place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as the importer, and

(b) in the same or substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions.

Rules to be applied in ascertaining value

(2) The following rules apply in the application of sub-section (1):

(a) if there were no sales at the time when the goods were shipped to Canada, there shall be substituted therefor the most recent sales prior to the time of shipment that fairly reflect the market value of the goods at the time of shipment;

(b) if there were no purchasers located at the place from which the goods were shipped to Canada, there shall be substituted therefor sales to the purchasers located nearest thereto;

(c) where goods imported into Canada and goods sold for home consumption are like goods except only that the goods sold for home consumption 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 home consumption, the goods imported and the goods sold for home consumption shall be deemed to be like goods for the purposes of this section, if, in the opinion of the Minister,

(i) the goods are being imported into Canada without that trade mark applied to them in order to avoid the operation of subsection (1) and

(ii) 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;

(d) regard shall not be had to a sale for home consumption to a purchaser by a vendor who 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, not controlled by or in control of or otherwise related to the purchaser; and
(e) where goods were not sold in the same or substantially the same quantities for home consumption

(1) if the quantity shipped to Canada is larger than the largest quantity sold for home consumption, those quantities shall be deemed to be the same quantities,

(ii) if the quantity shipped to Canada is smaller than the smallest quantity sold for home consumption, the value for duty shall be based on the amount for which, in the opinion of the Minister, having regard to that trade, such smaller quantities would have been sold if they had been sold for home consumption.

(3) Where the value for duty cannot be determined under subsections (1) and (2) for the reason that

(a) there were no purchasers in the country of export (in this subsection called 'home purchasers') who were at the same or substantially the same trade level as the importer, or

(b) although there were home purchasers who were at the same or substantially the same trade level as the importer, there were no sales to them in the circumstances described in subsections (1) and (2),

the home purchasers, if any, at the trade level nearest and subsequent to that of the importer to whom sales were made in the circumstances described in subsections (1) and (2) shall, for the purposes of those subsections, be deemed to have been at the same trade level as the importer.

*37. When value for duty to be cost of production plus profit*

Subject to section 38, where like goods were not sold for home consumption, or were not sold for home consumption in the circumstances described in section 36, but similar goods were so sold, the value for duty shall, notwithstanding any invoice or affidavit to the contrary, be the aggregate of

(a) the cost of production of the goods imported; and

(b) an amount that is the same percentage of the cost of production of the goods imported as the gross profit on the similar goods is of the cost of production of the similar goods.

*38. Special cases*

Where in any case or class of cases

(a) the value for duty cannot be determined under section 36 or 37 for the reason that like or similar goods are not sold in the country of export or are not sold in such country in the circumstances described in those sections,
(b) the goods imported
   (i) are intended to be assembled, packaged or further manufactured in Canada or are intended to enter into the course of manufacture in Canada,
   (ii) are used or obsolete goods,
   (iii) are not prime quality goods as known in the trade, or are known in the trade as remnants, close-outs or discontinued lines or are surplus goods,
   (iv) constitute a job lot, or
   (v) are intended to be used directly in the process of manufacture or production of goods and like goods are not sold in the country of export,

(c) like goods are leased but not sold in the country of export, or

(d) the Minister is of opinion that by reason of unusual circumstances the application of sections 36 and 37 is impracticable,

the value for duty shall be determined in such manner as the Minister prescribes.

"39. Cost plus reasonable profit

(1) Where the Minister is satisfied that material injury has been or may be caused to any industry in Canada, or any portion thereof, by reason of the importation of any new or unused goods or class of such goods at a value for duty less than the cost of production thereof, plus a reasonable amount for gross profit, he may so report to the Governor in Council, and, notwithstanding anything in this Act, the Governor in Council may order that the value for duty of those goods or that class of goods shall be increased to an amount equal to the cost of production thereof plus a reasonable amount for gross profit, having regard to the gross profit generally earned in that trade in the country of export, to be determined in the manner prescribed in section 37.

Duration of order

(2) The Governor in Council may at any time revoke an order made under subsection (1) and, unless sooner revoked, an order made under subsection (1) expires at the end of one year after the making thereof.

"40. Determination of cost of production, gross profit, etc.

Where sufficient information has not been furnished or is not available to enable the determination of cost of production, gross profit or fair market value under section 36, 37 or 39, the cost of production, gross profit or fair market value, as the case may be, shall be determined in such manner as the Minister prescribes.
"40A. Minimum value

(1) Notwithstanding anything in this Act, where the value for duty as determined under sections 36 to 40 is less than the amount for which the goods were sold to the purchaser in Canada, exclusive of all charges thereon after their shipment from the country of export, the value for duty shall be the amount for which the goods were sold, less the amount, if any, by which the fair market value of the goods has decreased between the time of purchase and the time of exportation.

Foreign tax excluded

(2) The amount of any internal tax imposed within the country of export or origin on any goods imported into Canada, from which such goods have been exempted or have been or will be relieved by means of a refund or drawback, shall be deducted from the value for duty of such goods as determined under sections 36 to 40.

Foreign import duties excluded

(3) The Governor in Council may order that such import duties imposed within the country of export or origin as he specifies shall be deducted, in whole or in part, from the value for duty of any goods as determined under Sections 36 to 40.

Discounts

(4) In determining the value for duty of any goods, no discount or deduction shall be allowed that is not shown, allowed and deducted on invoices covering sales for home consumption in the country of export, in the ordinary course of trade.

Value of best article in package

(5) In determining the value for duty of goods of the same material, or of a similar kind but a different quality, that are shipped in the same package, and were invoiced or sold at an average price, the value for duty of the best article contained in such package shall be deemed to be the average value of all the goods.

Goods on consignment

(6) For the purposes of sections 36 to 40, where goods are shipped to Canada on consignment

(a) if the goods were sold in the course of transit before importation, the person to whom such goods are sold shall be deemed to be the importer, and

(b) in all other cases, the consignee shall be deemed to be the importer.
Value for duty where market price has declined

(7) Notwithstanding anything in this Act

(a) where the market price of any manufactured goods in the country of export has, as the result of the advance of the season or the marketing period, declined to levels that do not reflect in the opinion of the Minister their normal price, the value for duty shall be the amount determined and declared by the Minister to be the average price, weighted as to quantity, at which the like or similar goods were sold for consumption in the country of export during a reasonable period, having regard to that trade, immediately preceding the date of shipment of the goods to Canada,

(b) where the market price in the country of export of any fresh fruit or vegetable of a class or kind produced in Canada has, as a result of the advance of the season or the marketing period, declined to levels that do not reflect in the opinion of the Minister their normal price, when imported into such region or part of Canada and during such period as the Minister may specify, shall be the amount determined and declared by him to be the average value, weighted as to quantity, at which like fresh fruits or vegetables were imported during the three-year period immediately preceding the date of shipment to Canada, and

(c) where at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that goods of any kind not entitled to entry under the British Preferential tariff or any lower tariff are being imported into Canada under such conditions as prejudicially or injuriously to affect the interests of Canadian producers or manufacturers, the Governor in Council may authorize the Minister to determine the value for duty of any class or kind of such goods, imported into such region or part of Canada and during such period as the Minister may specify, or may authorize the Minister to prescribe the manner in which such value for duty shall be determined, and the value so determined shall be deemed to be fair market value of such goods.

40B. Additions

(1) If the value for duty as determined under sections 36 to 40A does not include

(a) the amount of any subsidy or drawback of Customs duty that has been allowed by the government of any other country, or
(b) the amount or money value of any so-called royalty, rent or charge for use of any machine or goods of any description, that the seller or proprietor does or would usually charge thereon when the same are sold or leased or rented for use in the country of export, such amount shall be added thereto.

(2) There shall be added to the value for duty as determined under sections 36 to 40A the amount of consideration or money value of any special arrangement between the exporter and the importer, or between any persons interested therein, because of the exportation or intended exportation of such goods, or the right to territorial limits for the sale or use thereof."