Reproduced herewith are consolidated versions of the recently amended Special Import Measures Act and of the Regulations implementing this Act.

Comité des pratiques antidumping
Comité des subventions et mesures compensatoires

RENSEIGNEMENTS CONCERNANT LA MISE EN OEUVRE ET L’ADMINISTRATION DE L’ACCORD
Législation du Canada
Révision

On trouvera ci-après les versions définitives de la Loi sur les mesures spéciales d’importation et du règlement d’application de cette loi.

Comité de Prácticas Antidumping
Comité de Subvenciones y Medidas Compensatorias

INFORMACION SOBRE LA APLICACION Y ADMINISTRACION DEL ACUERDO
Legislación del Canadá
Revisión

Se adjuntan a la presente comunicación los textos refundidos, tras su reciente modificación, de la Ley sobre las Medidas Especiales de Importación y del correspondiente Reglamento de aplicación.

1English and French only/anglais et français seulement/inglés y francés solamente
AMENDMENTS TO THE SPECIAL IMPORT MEASURES ACT

The Special Import Measures Act (SIMA) provides for the imposition of anti-dumping or countervailing duties when Canadian producers are materially injured by dumped or subsidized imported goods. The Department of National Revenue, Customs and Excise, known as Revenue Canada, investigates dumping and subsidization; the Canadian International Trade Tribunal (CITT) conducts the formal inquiry into the question of injury.

Free Trade Agreement

Chapter 19 of the Canada-U.S. Free Trade Agreement (FTA) provides for a binational dispute settlement mechanism to ensure that Canada and the U.S. apply their respective anti-dumping and countervailing duty laws is consistent with these laws. Producers in both countries maintain the right to seek redress using domestic anti-dumping and countervailing duty laws. However, any protection granted by the administering authorities is subject to challenge and review by a binational panel or by the domestic courts at the option of the parties. The panel is required to determine, on the basis of the same standard which would have been applied by domestic courts, whether existing laws were applied correctly. Findings by a panel are binding on the governments of Canada and the U.S. Should a panel determine that the administering authority (in the case of Canada, the Deputy Minister of Revenue Canada or the CITT) erred, it can send the issue back to the relevant administering authority to correct the error and make a new decision. Where a determination is referred to a binational panel under Chapter 19, judicial review by domestic courts is precluded.

Under this mechanism, only the two governments can request the establishment of a panel, but each government shall do so at the request of any private party who is otherwise entitled under the law of the importing party to commence domestic procedures for judicial review.

Either government can also invoke an extraordinary challenge procedure where it is alleged that a panelist had a conflict of interest or there was a serious miscarriage of justice.
SUMMARY OF THE AMENDMENTS

The dispute settlement procedure described above was implemented into Canadian law by amendments to the SIMA. The amended SIMA is structured in three parts: Part I contains provisions dealing with the assessment of duty and the conduct of investigations. Part II deals with the establishment and operation of the dispute settlement panels and extraordinary challenge committees. Part III contains general provisions.

Amendments to Part I

(Assessment of Duties, Investigations, the CITT)

- ensure that duties imposed under SIMA continue to to be applied during both domestic court and binational panel proceedings

- provide for the refund of duties (with interest) to give effect to a court or panel decision

- set out the procedures for Revenue Canada and the CITT to follow when their decisions are referred back for action following a review by a binational panel or court

- require the CITT to make a separate order or finding with respect to U.S. goods when a inquiry also involves goods from third countries, in order to preclude access to panels by third countries

- allows the U.S. (or a manufacturer, producer or exporter of goods of the U.S.) to request a redetermination by Revenue Canada of certain Revenue Canada rulings (related amendments also require that these rulings be made within one year of the request). Previously, only an importer had such appeal rights and there was no legislated time limit for the decision on a request for redetermination)

Amendments to Part II

(Binational Panel Review)

- provide for binational panel review of final anti-dumping and countervailing duty determinations regarding U.S. goods
- specify which decisions are subject to panel review

- establish the legal grounds for binational dispute settlement panel or extraordinary challenge committee review, the time frames and notice requirements for such reviews and the circumstances under which domestic judicial review is precluded

- provide for the conduct of binational dispute settlement panel and committee reviews and for the establishment of a Secretariat office in Canada to facilitate the work of panels and committees

- provide sanctions for the improper disclosure of business proprietary and other privileged information and for the violation of U.S. protective orders and Canadian disclosure undertakings relating to such information.

- provide that future amendments to Canadian anti-dumping or countervailing duty laws will not apply to goods of the U.S. unless and Act of the Canadian Parliament expressly says so

Amendments to Part III

(General)

- make certain decisions by Revenue Canada reviewable by the Federal Court of Appeal on the same grounds as are set forth in section 28 of the Federal Court Act (FCA). (Such decisions were reviewable only under the more limited grounds set out in s.18 of the FCA. Under the FTA they became subject to panel review on the same grounds as in s.28. This amendment ensured consistency of the grounds for domestic judicial and panel review.)

- allow the Minister for International Trade to request a panel review of a final anti-dumping or countervailing duty determination made under U.S. law in respect of Canadian goods exported to the U.S. and require him to do so at the request of a person entitled to ask for judicial review

Regulations

New regulations were passed to: prescribe the persons who are required to comply with disclosure undertakings, include the provinces in the class of persons otherwise entitled to seek domestic judicial review (in order to give them standing before a panel) and prescribe the powers of panels and committees.
Special Import Measures Act

R.S., 1985, c. S-15

amended by
R.S., 1985, c. 23 (1st Supp.)
R.S., 1985, c. 1 (2nd Supp.)
R.S., 1985, c. 47 (4th Supp.)
1988, c. 65

November, 1989
WARNING NOTE

Users of this office consolidation are reminded that it is prepared for convenience of reference only and that, as such, it has no official sanction.

AVERTISSEMENT

La présente codification administrative n'est préparée que pour la commodité du lecteur et n'a aucune valeur officielle.
CHAPTER S-15

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

SHORT TITLE

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

INTERPRETATION

Definitions

"amount of the subsidy", in relation to any subsidized goods, means

(a) the amount of the subsidy on the goods determined and adjusted in the prescribed manner, or

(b) where the manner of determining the amount of the subsidy has not been prescribed or, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of the amount of the subsidy in the prescribed manner, the amount of the subsidy on the goods determined and adjusted in such manner as the Minister specifies;

"Canadian Secretary" means the Secretary appointed pursuant to subsection 77.24(1);

"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;

"amount of the subsidy", in relation to any subsidized goods, means

(a) the amount of the subsidy on the goods determined and adjusted in the prescribed manner, or

(b) where the manner of determining the amount of the subsidy has not been prescribed or, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the determination of the amount of the subsidy in the prescribed manner, the amount of the subsidy on the goods determined and adjusted in such manner as the Minister specifies;

"Canadian Secretary" means the Secretary appointed pursuant to subsection 77.24(1);

"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;

CHAPITRE S-15

Loi portant assujettissement aux droits anti-dumping et aux droits compensateurs

TITRE ABRÉGÉ

1. Loi sur les mesures spéciales d'importation. 1984, ch. 25, art. 1.

DÉFINITIONS ET INTERPRÉTATION

Définitions

«Accord» L'accord sur les subventions et les droits compensateurs, signé à Genève (Suisse) le 17 décembre 1979, portant le titre d'Accord relatif à l'interprétation et à l'application des articles VI, XVI et XXIII de l'Accord général sur les tarifs douaniers et le commerce.

«Accord de libre-échange» S'entend de l'Accord au sens de l'article 2 de la Loi de mise en œuvre de l'Accord de libre-échange Canada — États-Unis.

«agent désigné» L'agent désigné, ou l'agent appartenant à une catégorie d'agents désignée, en application de l'article 59 de la Loi sur les douanes.

«détachement» Autorisation d'enlever des marchandises d'un bureau de douane, d'un entrepôt d'attente, d'un entrepôt de stockage ou d'une boutique hors taxes en vue de leur consommation au Canada.

«dossier complet» Est complet tout dossier d'une plainte présentée par écrit, concernant le dumping ou le subventionnement de marchandises et dans lequel:

(a) d'une part:
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"Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise;

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

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

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

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

"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, 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, 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;

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

"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, in relation to any goods, means the amount by which the normal value of the goods exceeds the export price thereof;

material injury means, in respect of the dumping or subsidizing of any goods, material injury to the production in Canada of like goods, and includes, in respect only of the subsidizing of an agricultural product, an

(i) it is declared that the goods have been or are being dumped or subsidized and that the dumping or subsidization has caused or is likely to cause, or has caused, or is likely to cause, material injury to the production of like goods in Canada;

(ii) the particulars of the facts on which such declaration is based are stated in sufficient detail;

(iii) other observations which in the opinion of the respondent are useful;

b) in the event of a dumping case, the following is provided by the respondent:

(i) the information which the respondent has in order to establish the facts referred to in subparagraph (i);

(ii) any other information which the respondent considers may be useful;

(iii) any undertaking or engagements written in the case of dumping or subsidization of goods the subject of an inquiry or investigation under this Act, which have the following characteristics:

a) in the case of dumped goods, is taken by the exporter responsible or they are taken separately by all the exporters responsible for all or nearly all the exports of these goods to Canada, the undertaking or each one of which having for objective:

(i) to revise conformably to the terms of the undertaking the price at which they are sold by importers to be found in Canada,

(ii) to cease the dumping;

b) in the case of subsidized goods:...
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increase in the financial burden on a federal or provincial government agricultural support program in Canada;

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

"Minister" means the Minister of National Revenue;

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

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

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

(b) includes, for the purposes of sections 3 to 6 and 76, an order or finding made by the Tribunal pursuant to subsection 91(3), that has not been rescinded pursuant to section 76, but, where the order or finding has been amended one or more times pursuant to that section, as last so amended;

"person" includes a partnership and an association;

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

"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 allegations that the dumping or subsidizing has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

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

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

(b) the complainant provides

(i) such information as is available to him to prove the facts referred to in subparagraph (a)(ii), and
toutes ou de presque toutes les exportations de ces marchandises vers le Canada, l'exportateur ou chacun des exportateurs ayant le consentement du gouvernement du pays d'exportation des marchandises pour prendre l'engagement ou les engagements, et s'engageant à réviser, conformément aux termes de l'engagement, le prix auquel elles sont vendues à des importateurs se trouvant au Canada,

(ii) ou bien il est pris par le gouvernement du pays responsable ou les gouvernements des pays responsables de toutes ou de presque toutes les exportations de ces marchandises vers le Canada, le pays ou chacun des pays, selon le cas, s'engageant conformément aux termes de l'engagement :

(A) soit à éliminer la subvention,

(B) soit à limiter le montant de la subvention,

(C) soit à limiter la quantité exportée vers le Canada,

(D) soit à éliminer, par d'autres moyens, les effets qu'a la subventionnement sur la production au Canada de marchandises similaires.

"gouvernement" Le gouvernement d'un pays étranger; lui sont assimilés :

a) les gouvernements ou administrations régionaux ou locaux de ce pays, notamment ceux d'une province, d'un État ou d'une municipalité;

b) les personnes et les institutions habilitées, par eux ou en vertu de leurs lois ou règlements, à agir en leur nom ou à les représenter;

c) les associations d'États souverains dont le pays est membre.

"gouvernement des États-Unis" Les ministères et organismes fédéraux des États-Unis désignés par règlement.

"importateur" La personne qui est le véritable importateur des marchandises.

"marchandises similaires" Selon le cas :

a) marchandises identiques aux marchandises en cause;
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(ii) such other information as the Deputy Minister may reasonably require him to provide;

"provisional duty" means duty imposed under section 8;

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

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

"retardation", in respect of the dumping or subsidizing of any goods, means material retardation of the establishment of the production in Canada of like goods:

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

"Secretary" means the Secretary of the Tribunal;

"Subsidies and Countervailing Duties Agreement" means the Agreement signed at Geneva, Switzerland, on December 17, 1979 and known as the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade;

"subsidized goods" means

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

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

"subsidy" includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, as a result of any scheme, program, to a default, marchandises dont l'utilisation et les autres caractéristiques sont très proches de celles des marchandises en cause.

"marchandises subventionnées" Les marchandises suivantes:

a) celles qui, à un stade quelconque de leur production ou de leur commercialisation, ou lors de leur transport, de leur exportation ou de leur importation, ont bénéficié ou bénéficieront, directement ou indirectement, d'une subvention de la part du gouvernement d’un pays étranger;

b) celles qui sont écoulées à perte par un gouvernement d’un pays étranger, en outre, celles dans la production ou la fabrication desquelles entrent, se consomment ou sont autrement utilisées les marchandises visées à l’alinéa a) ou b).

"marge de dumping" L’excédent de la valeur normale de marchandises sur leur prix à l’exportation.

"membre" [Abrogée, L.R. (1985), ch. 47 (4° suppl.), art. 52]

"membre titulaire" [Abrogée, L.R. (1985), ch. 47 (4° suppl.), art. 52]

"ministre" Le ministre du Revenu national.

"montant de la subvention" Le montant de la subvention octroyée pour des marchandises données, établi et rectifié, selon le cas:

a) conformément aux modalités réglementaires;

b) conformément aux modalités que fixe le ministre si les règlements ne prévoient pas de façon de l’établir ou si le sous-ministre est d’avis qu’il est impossible de l’établir conformément aux modalités réglementaires vu l’insuffisance ou l’inaccessibilité des renseignements nécessaires.

"ordonnance ou conclusions" L’ordonnance ou les conclusions non annulées aux termes de l’article 76, et les plus récentes dans les cas de modification, rendues par le Tribunal:

a) aux termes des articles 43 ou 44 sans annulation aux termes du paragraphe 91(3);

b) en outre, pour l’application des articles 3 à 6 et de l’article 76, aux termes du paragraphe 91(3).
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practice or thing done, provided or implemented by the government of a country other than Canada, but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback;

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

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

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

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

(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,

(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 the 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" means such department, agency or other body of the federal government of the United States as is prescribed.

(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.

(3) For the purposes of subsection (2), persons are related to each other if
(a) they are individuals connected by blood relationship, marriage or adoption within the meaning of subsection 251(6) of the Income Tax Act;
(b) one is an officer or director of the other;
(c) each such person is an officer or director of the same two corporations, associations, partnerships or other organizations;
(d) they are partners;
(e) one is the employer of the other;
(f) they directly or indirectly control or are controlled by the same person;
(g) one directly or indirectly controls or is controlled by the other;
(A) 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.

(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.

The Deputy Minister, in considering any question relating to the interpretation or application of the definition “subsidized goods” or “subsidy” or the expression “export subsidy”, shall take fully into account the provisions of Articles 9 and 11 of the Subsidies and Countervailing Duties Agreement.

Notwithstanding the definition “amount of the 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 the subsidy on the goods is, for the purposes of this Act, the amount of the subsidy determined and adjusted in such manner as is provided under that definition plus the amount of the indemnity, payment or reimbursement.

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

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

Persons dealing at arm’s length

(5) For the application of the alinéa (2)b), the question of savoir si des personnes non liées entre elles ont eu, à l’époque concernée, un lien de dépendance entre elles est une question de fait.

(6) Par dérogation à la définition de «montant de la subvention», au montant de la subvention octroyée pour des marchandises subventionnées, établi et rectifié en vertu de cette définition, s’ajoute celui de l’indemnité versée, du paiement ou du remboursement effectué par le fabricant, le producteur, le vendeur ou l’exportateur des marchandises ou le gouvernement d’un pays étranger qui s’est engagé, de quelque façon que ce soit, vis-à-vis de l’importateur des marchandises ou de leur acheteur se trouvant au Canada, à payer en son nom ou à lui rembourser tout ou partie des droits compensateurs qui peuvent être exigibles sur les marchandises ou à l’indemniser à cet égard.

(7) L’application des dispositions de la présente loi traitant à la fois des marchandises sous-évaluées et des marchandises subventionnées est la suivante : 

a) lorsqu’elles s’appliquent au dumping, elles ne s’appliquent pas au subventionnement;

b) lorsqu’elles s’appliquent au subventionnement, elles ne s’appliquent pas au dumping.

(8) Pour l’application de la Loi sur les douanes, la présente loi est à considérer comme un texte de législation douanière.
Powers, duties and functions of Deputy Minister

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

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.

Powers et fonctions du sous-ministre

(9) Les pouvoirs ou fonctions conférés au sous-ministre par la présente loi peuvent être exercés par toute personne qu’il autorise à agir ainsi. Les pouvoirs ou fonctions exercés ainsi sont réputés l’avoir été par le sous-ministre.

L.R. (1985), ch. S-15, art. 2; L.R. (1985), ch. 23 (1er suppl.), art. 1, ch. 1 (2e suppl.), art. 197 et 213, ch. 47 (4e suppl.), art. 52; 1988, ch. 65, art. 23.

PART I
SPECIAL IMPORT MEASURES
LIABILITY FOR ANTI-DUMPING, COUNTERVAILING AND PROVISIONAL DUTIES

Anti-dumping and Countervailing Duty

3. 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, is causing or is likely to cause material injury or has caused or is causing retardation, 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 the subsidy on the imported goods. 1984, c. 25, s. 3.

Other cases

4. There shall be levied, collected and paid 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 material injury,

(ii) has caused, is causing and is likely to cause material injury, or

(ii) would have caused material injury except for the fact that provisional duty was applied or an undertaking was accepted in respect of the goods, and

(b) that were released

(a) dans le cas de marchandises sous-évaluées, des droits antidumping d’un montant égal à la marge de dumping des marchandises;

(b) dans le cas de marchandises subventionnées, des droits compensateurs d’un montant égal à celui de la subvention qui est octroyée pour elles. 1984, c. 25, art. 3.

4. Les marchandises sous-évaluées ou subventionnées importées au Canada :

(a) d’une part, alors que le Tribunal a établi après le dédouanement des marchandises, par ordonnance ou dans ses conclusions, que le dumping ou le subventionnement de marchandises de même description :

(i) a causé un préjudice sensible, (ii) a causé, cause et causera vraisemblablement un préjudice sensible, et

(ii) aurait causé ce préjudice sans l’application de droits provisoires ou l’acceptation d’un engagement portant sur ces marchandises;

(b) d’autre part, dont le dédouanement a eu lieu:
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(i) during the period commencing on the day the preliminary determination is made and ending on the day the Tribunal makes the order or finding referred to in paragraph (a), or
(ii) in any case where an undertaking accepted by the Deputy Minister with respect to the goods has been violated, during the period commencing on the day the undertaking is violated or the ninetieth day preceding the day notice of termination of the undertaking is given pursuant to paragraph 52(1)(f), whichever is later, and ending on the day that subsection 8(1) becomes applicable to the goods,
a duty as follows:

(c) in the case of dumped goods, an anti-dumping duty in an amount equal to the margin of dumping of the goods, and
(d) in the case of subsidized goods, a countervailing duty in an amount equal to the amount of the subsidy on the goods,
but not exceeding, in the case of any goods to which subparagraph (b)(i) applies, the duty, if any, paid or payable in respect of the goods pursuant to section 8.

R.S., 1985, c. S-15, s. 4; 1988, c. 65, s. 25.

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 material injury or would have caused material 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 material injury, and
(ii) material injury has been caused by reason of the fact that the imported goods
(A) constitute a massive importation into Canada, or

(i) soit au cours de la période commençant à la date de la décision provisoire et se terminant à la date de l’ordonnance ou des conclusions du Tribunal prévues à l’alinéa a),
(ii) soit au cours de la période commençant à la date où un engagement portant sur ces marchandises n’est pas honoré ou le quatre-vingt-dixième jour précédant la date où avis qu’il y a été mis fin est donné conformément à l’alinéa 52(1)(f) — la date la plus rapprochée de celle de l’avis étant à retenir — et se terminant le jour où le paragraphe 8(1) devient applicable aux marchandises,
sont assujetties aux droits suivants :

(c) dans le cas de marchandises sous-évaluées, des droits antidumping d’un montant égal à la marge de dumping des marchandises;
(d) dans le cas de marchandises subventionnées, des droits compensateurs d’un montant égal à celui de la subvention octroyée pour elles.

Le montant de ces droits ne peut cependant dépasser, pour les marchandises visées au sous-alinéa b)(i), celui des droits éventuellement payés ou exigibles en vertu de l’article 8.


5. Les marchandises sous-évaluées importées au Canada sont assujetties à des droits antidumping d’un montant égal à la marge de dumping des marchandises si, à la fois :
(a) le Tribunal a établi, après le dédouanement des marchandises, par ordonnance ou dans ses conclusions, que :
(i) d’une part :
(A) ou bien a eu lieu une importation considérable de marchandises similaires dont le dumping a causé un préjudice sensible ou en aurait causé un sans l’application de mesures antidumping,
(B) ou bien l’importateur de ces marchandises était ou aurait dû être au courant du dumping que pratiquait l’exportateur et du fait que ce dumping causerait un préjudice sensible.
(ii) d’autre part, un préjudice sensible a été causé du fait que les marchandises importées :
(A) soit représentent une importation massive,
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(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 material 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 Deputy Minister made a preliminary determination of dumping in respect of the goods or goods of that description,

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

1984, c. 25, s. 5.

6. Where any subsidy on subsidized goods is an export 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) material 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 material injury,

(b) that were released during the period of ninety days preceding the day on which the Deputy Minister made a preliminary determination of subsidizing in respect of the goods or goods of that description, and

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

a countervailing duty in an amount equal to such of the amount of the subsidy on the imported goods as is an export subsidy. 1984, c. 25, s. 6.

7. (1) The Governor in Council may order an investigation to determine the amount of the

(B) soit appartiennent à une série d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte,

et le Tribunal estime nécessaire que soient imposés des droits antidumping sur les marchandises importées afin de prévenir la réapparition du préjudice;

b) le dédouanement des marchandises a eu lieu au cours de la période de quatre-vingt-dix jours précédant la date à laquelle le sous-ministre a rendu une décision provisoire de dumping à leur sujet ou à celui de marchandises répondant à cette description. 1984, ch. 25, art. 5.
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subsidy on any subsidized goods that are the product of a country specified in the order, and where

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

(b) the Committee of Signatories established pursuant to Article 16 of the Subsidies and Countervailing Duties Agreement has authorized Canada to impose countervailing duties on the subsidized goods,

the Governor in Council may, on the recommendation of the Minister of Finance, by order impose a countervailing duty on any subsidized goods that are the product of that country and that are of the same description as the goods in respect of which the Deputy Minister has determined the amount of the 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.

(2) Where subsidized goods on which a countervailing duty has been imposed pursuant to subsection (1) are imported into Canada and the amount of the subsidy on the subsidized 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 the subsidy on the goods. 1984, c. 25, s. 7.

Provisional Duty

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

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

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

Droits provisoires

8. (1) Lorsque des marchandises sous-évaluées ou subventionnées de même description que celles faisant l'objet d'une décision provisoire de dumping ou de subventionnement prévue par la présente loi sont dédouanées au cours de la période commençant à la date de cette décision et se terminant à la première des dates suivantes :

a) le jour où le sous-ministre fait clore, conformément au paragraphe 41(1), l'enquête sur les marchandises répondant à cette description;

b) le jour où le Tribunal rend l'ordonnance ou les conclusions au sujet des marchandises répondant à cette description,
shall, on demand of the Deputy Minister for payment of provisional duty on the imported goods,

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

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

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

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

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

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

(a) be returned to the importer forthwith after

(i) the Deputy Minister causes the investigation to be terminated pursuant to sub-
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section 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 likely to cause material 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(c) to (e) as are applicable.

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

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

Payment of Duty During Court Proceedings and Proceedings under Part II

9. (1) Where proceedings are commenced in the Federal Court of Appeal by an application under section 28 of the Federal Court Act or 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

(ii) les procédures relatives au dumping ou au subventionnement des marchandises répondant à cette description sont closes conformément à l'article 47,
(iii) le Tribunal rend, au sujet des marchandises répondant à cette description, une ordonnance ou des conclusions portant que le dumping ou le subventionnement des marchandises n'est que susceptible de causer un préjudice sensible;
b) restitués à l'importateur, jusqu'à concurrence des droits payables sur les marchandises en cause, dès que l'agent désigné rend une décision sur ces marchandises conformément à celui des alinéas 55c) à e) qui est applicable.

(3) Les importateurs qui bénéficient d'une restitution de droits provisoires en application du paragraphe (2) reçoivent des intérêts, au taux réglementaire ou déterminé de la manière réglementaire, sur ces droits par mois ou fraction de mois s'écoulant entre la date du versement des droits et celle de leur restitution.

(4) Il n'est tenu aucun compte des intérêts dus en application du présent article dont le montant est inférieur à dix dollars.

Payment of Duty During Court Proceedings and Proceedings under Part II

9. (1) Dans le cas où un recours est exercé devant la Cour d’appel fédérale, aux termes des articles 28 de la Loi sur la Cour fédérale ou 96.1 de la présente loi, en révision et annulation d’une ordonnance ou de conclusions du Tribunal portant que des marchandises importées au Canada de même description que des marchandises auxquelles s’appliquent l’ordonnance ou les conclusions sont assujetties à des droits, l’assujettissement continue, malgré les ordonnances ou décisions rendues pendant la procédure, tant au cours de celle-ci que par la suite, sauf si le jugement définitif emporte annulation de l’ordonnance ou des conclusions quant aux marchandises ou à certaines d’entre elles; le cas échéant:
a) l’assujettissement se termine à la date du jugement définitif pour les marchandises
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(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).

(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.

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.

9.2 (1) Where duty is leviable, collectable and payable (in this section referred to as "payable") under this Act pursuant to an order of finding of the Tribunal on goods imported into Canada and proceedings are commenced in the Federal Court of Appeal by an application under section 96.1 to review and set aside the final determination of the Deputy Minister under paragraph 41(1)(a) on which the order

importées de même description que celles que vise l'annulation;

b) l'ordonnance ou les conclusions sont réputées n'avoir jamais été rendues quant à ces marchandises.

(2) Pour l'application du paragraphe (1), est compris dans la procédure devant la Cour d'appel fédérale tout appel de la décision de ce tribunal.


9.1 Dans le cas où est demandée la révision, sous le régime de la partie II, d'une ordonnance ou de conclusions du Tribunal portant que des marchandises importées au Canada en provenance des États-Unis de même description que des marchandises auxquelles s'appliquent l'ordonnance ou les conclusions sont assujetties à des droits, l'assujettissement continue, malgré les ordonnances ou décisions rendues pendant la procédure, tant au cours de celle-ci que par la suite, sauf si le jugement définitif emporte annulation de l'ordonnance ou des conclusions quant aux marchandises ou à certaines d'entre elles; le cas échéant :

a) l'assujettissement se termine à la date du jugement définitif pour les marchandises provenant des États-Unis de même description que celles que vise l'annulation;

b) l'ordonnance ou les conclusions sont réputées n'avoir jamais été rendues quant à ces marchandises.

1988, ch. 65, art. 28.

9.2 (1) Dans le cas où, d'une part, une ordonnance ou des conclusions du Tribunal portent que des marchandises importées au Canada sont assujetties à des droits et, d'autre part, un recours est exercé devant la Cour d'appel fédérale aux termes de l'article 96.1 en révision et annulation de la décision définitive du sous-ministre — rendue au titre de l'alinéa 41(1)a) — sur laquelle sont fondées l'ordon-
or finding is based, duty continues, notwithstanding any order or decision that may be made or given in the course of the proceedings, to be so payable pursuant to the order or finding on imported goods of the same description as those goods during the course of the proceedings and after they are finally disposed of, unless the final disposition of the proceedings results in the final determination being set aside or being set aside in relation to particular goods, or the Deputy Minister recommencing the investigation and terminating it under paragraph 41(1)(b), in which case

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

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

(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.

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

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

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

9.3 Dans le cas où, d’une part, une ordonnance ou des conclusions du Tribunal portent que des marchandises importées au Canada en provenance des États-Unis sont assujetties à des droits et, d’autre part, la révision de la décision définitive du sous-ministre — rendue au titre de l’alinéa 41(1)(a) — sur laquelle sont fondées l’ordonnance ou les conclusions est demandée au titre de la partie II, l’assujettissement des marchandises de même description que ces marchandises continue, malgré les ordonnances ou décisions rendues pendant la procédure, tant au cours de celle-ci que par la suite, sauf si le jugement définitif emporte reprise de l’enquête par le sous-ministre — close par la suite au titre de l’alinéa 41(1)b); le cas échéant :

a) l’assujettissement se termine à la date de clôture pour les marchandises importées de cette description;

b) l’ordonnance ou les conclusions sont réputées n’avoir jamais été rendues quant à ces marchandises.
(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.

9.4 (1) Where an order or finding of the Tribunal under subsection 76(4) rescinding an order or finding described in any of sections 3 to 6 is referred back to the Tribunal pursuant to an order under subsection 77.15(3) or (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.

(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.

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

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

(b) where a portion only of the margin of dumping of the imported goods is, in the opinion of the Deputy Minister, attributable to the export subsidy, an anti-dumping duty is leviable, collectable and payable on the imported goods only in an amount equal to that portion of the margin of dumping of the goods that is not, in the opinion of the Deputy Minister, attributable to the export subsidy. 1984, c. 25, s. 10.

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

(2) Any person who fails to pay any amount owing under subsection (1) shall pay, in addition to the amount owing, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month commencing thirty days after the Deputy Minister makes a demand under subsection (1) during which any amount remains outstanding, calculated on the amount outstanding.
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(3) Where interest owing under this section is less than ten dollars, no interest shall be paid.  

12. (1) Where, pursuant to an application under section 28 of the Federal Court Act or section 96.1 of this Act or a review under Part 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.

(1.1) Where, pursuant to an application under section 28 of the Federal Court Act or section 96.1 of this Act or a review under Part 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 those particular goods, as the case may be, any duty paid under this Act pursuant to the first-mentioned order or finding by or on behalf of an importer shall, except to the extent of any duty payable by the importer as a consequence of the other order or finding, be returned to the importer forthwith after the other order or finding is made.

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

(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, return of duty where order or finding set aside or rescinded

Idem

Amounts under ten dollars

Return of duty

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

12. (1) Where, pursuant to an application under section 28 of the Federal Court Act or section 96.1 of this Act or a review under Part 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.

(1.1) Where, pursuant to an application under section 28 of the Federal Court Act or section 96.1 of this Act or a review under Part 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 those particular goods, as the case may be, any duty paid under this Act pursuant to the first-mentioned order or finding by or on behalf of an importer shall, except to the extent of any duty payable by the importer as a consequence of the other order or finding, be returned to the importer forthwith after the other order or finding is made.

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

(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, return of part of duty where order or finding set aside or rescinded

Restitution de droits dans certains cas d'annulation de l'ordonnance ou des conclusions

Restitution partielle

Restitution de droits

Idem

Idem

Idem

Idem
is considered by the Deputy Minister to be the importer in Canada of the goods and it is subsequently ruled by the Tribunal that the person was not the importer in Canada of the goods, the duty so paid or security so posted shall be returned to the person forthwith after the Tribunal's ruling is made.

R.S., 1985, c. S-15, s. 12; 1988, c. 65, s. 29.

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


13.1 (2) Where interest owing under this section is less than ten dollars, no interest shall be paid. 1992, c. 50, s. 13.

14. The Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act. 1984, c. 25, s. 14.

Valeur normale et prix à l'exportation

Valeur normale

15. La valeur normale des marchandises vendues à un importateur se trouvant au Canada est, sous réserve des articles 19 et 20, le...
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 Deputy Minister or, where, in the opinion of the Deputy Minister, the nature of the trade in those goods or the fact that they are sold to the importer for future delivery requires that sales of like goods by the exporter during a period other than a period of 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 Deputy Minister specifies for those goods or for goods of the class to which those goods belong, and
(e) at the place from which the goods were shipped directly to Canada or, if the goods have not been shipped to Canada, at the place from which the goods would be shipped directly to Canada under normal conditions of trade,
adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the like goods sold by the exporter. 1984, c. 25, s. 15.
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conditions de vente et de taxation. 1984, ch. 25, art. 15.

16. (1) Pour l’application de l’article 15 : 

a) si, selon le sous-ministre, l’exportateur n’a pas effectué, au lieu désigné à l’alinéa 15e), un nombre de ventes de marchandises similaires permettant une comparaison utile avec les ventes des marchandises à l’importateur se trouvant au Canada mais qu’il a effectué des ventes de marchandises dans un ou plusieurs autres lieux du pays d’exportation, les ventes de marchandises similaires en cet autre lieu ou celui des plusieurs autres lieux qui est le plus proche de celui désigné à l’alinéa 15e), selon le cas, sont ajoutées aux ventes de marchandises similaires que l’exportateur a effectuées au lieu désigné à l’alinéa 15e); 

b) les acheteurs visés au sous-alinéa 15a)(i) et qui sont situés au niveau suivant du circuit de distribution le plus proche de celui de l’importateur doivent être préférés, pour permettre une comparaison utile avec la vente de marchandises à l’importateur, aux acheteurs visés à l’alinéa 15a) si le sous-ministre est d’avis que le nombre de ventes de marchandises similaires par l’exportateur aux acheteurs visés au sous-alinéa 15a)(i) et qui sont situés au même niveau ou presque du circuit de distribution que l’importateur se trouvant au Canada ne permet pas une comparaison utile; 

c) sont réputés être l’exportateur le ou les vendeurs que le sous-ministre peut désigner parmi ceux qui ont effectué des ventes de marchandises similaires pour consommation intérieure dans le pays d’exportation si le sous-ministre est d’avis que l’exportateur n’a pas effectué un nombre de ventes de marchandises similaires permettant une comparaison utile avec les ventes des marchandises à l’importateur se trouvant au Canada parce qu’elles ont été faites, selon le cas : 

(i) uniquement ou essentiellement pour l’exportation, 

(ii) uniquement ou essentiellement à des acheteurs qui n’étaient pas des acheteurs visés au sous-alinéa 15a)(i) au cours de la période applicable en vertu de l’alinéa 15d); 

d) les ventes de marchandises similaires sont celles où les marchandises similaires sont en quantité la plus grande et que l’exportateur a
sales of like goods for use in the country of export by other vendors, such one or more of any of those vendors that the Deputy Minister may specify shall be deemed to be the exporter for the purpose of determining the normal value of the goods sold to the importer in Canada;

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

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

(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 that, in the opinion of the Deputy Minister, forms part of a series of sales of goods at prices that do not provide for recovery in the normal course of trade and within a reasonable period of time of the cost of production of the goods, the administration and selling costs with respect to the goods and an amount for profit. 1984, c. 25, s. 16.

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) is:

(a) the price at which the preponderance of sales of like goods that comply with all the terms and conditions referred to in section 15 or that are applicable by virtue of subsection 16(1) was made by the exporter to purchasers throughout the period; and

(b) the price at which the preponderance of sales of like goods for use in the country of export by other vendors, such one or more of any of those vendors that the Deputy Minister may specify shall be deemed to be the exporter for the purpose of determining the normal value of the goods sold to the importer in Canada;

(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 that, in the opinion of the Deputy Minister, forms part of a series of sales of goods at prices that do not provide for recovery in the normal course of trade and within a reasonable period of time of the cost of production of the goods, the administration and selling costs with respect to the goods and an amount for profit. 1984, c. 25, s. 16.

17. Dans le calcul de la valeur normale de marchandises visée à l'article 15, le prix des marchandises similaires que l'exportateur vend au cours de la période mentionnée à l'alinea 15(d) est, selon le cas:

(a) le prix auquel a été effectué le plus grand nombre de ventes remplaçant les conditions énumérées à l'article 15 ou applicables en vertu du paragraphe 16(1);
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(b) when there is no such preponderance of sales at a single price throughout the period, the weighted average of the prices at which like goods were so sold by the exporter to purchasers throughout the period. 1984, c. 25, s. 17.

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 Deputy Minister,

(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. 1984, c. 25, s. 18.

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

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

18. Pour l’application du présent article, les marchandises importées et les marchandises vendues pour consommation dans le pays d’exportation sont réputées des marchandises similaires, bien que seules les marchandises destinées à la consommation dans ce pays aient une marque de commerce au sens de la Loi sur les marques de commerce et que des marchandises similaires à celles importées ne soient pas vendues pour consommation dans ce pays, si le sous-ministre est d’avis que:

a) d’une part, les marchandises sont importées sans marque de commerce afin d’être soustraites à l’application de l’article 15;

b) d’autre part, après leur importation, les marchandises porteront, en toute probabilité, cette marque de commerce ou une autre susceptible d’être confondue avec elle. 1984, ch. 25, art. 18.

19. La valeur normale de marchandises visée à l’article 15 qui ne peut être établie parce que le nombre de ventes de marchandises similaires remplissant les conditions énumérées à l’article 15 ou applicables en vertu du paragraphe 16(1) ne permet pas, de l’avis du sous-ministre, une comparaison utile avec la vente des marchandises à l’importateur se trouvant au Canada, est, au choix du sous-ministre, dans chaque cas ou série de cas, l’un des montants suivants, sous réserve de l’article 20:

a) le prix de vente, d’une part, auquel des marchandises similaires sont vendues, au cours de la période visée à l’alinéa 15(d), par l’exportateur à des importateurs se trouvant dans des pays étrangers et, d’autre part, qui, de l’avis du sous-ministre, traduit la valeur marchande de ces marchandises au moment de leur vente à l’importateur se trouvant au Canada, ce prix étant rectifié, selon les modalités et dans les circonstances prévues par règlement, dans le but de traduire, en ce qui a trait à la comparaison entre le prix des marchandises vendues à l’importateur se trouvant au Canada et le prix des mar-
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exporter to importers in the country other than Canada; or

(b) the aggregate of

(i) the cost of production of the goods,
(ii) an amount for administrative, selling and all other costs, and
(iii) an amount for profits. 1984, c. 25, s. 19.

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

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

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

the normal value of the goods is

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

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

(ii) the aggregate of

(A) the cost of production of the like goods,
(B) an amount for administrative, selling and all other costs, and
(C) an amount for profits,

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

dises similaires vendues par l'exportateur à des importateurs se trouvant dans ces pays étrangers, les différences existant notamment en matière de conditions de vente et de taxation;

b) la somme des montants suivants : 

(i) le coût de production des marchandises,
(ii) un montant pour les frais, notamment les frais administratifs et les frais de vente, 
(iii) un montant pour les bénéfices. 1984, ch. 25, art. 19.

20. Si des marchandises vendues à un importateur se trouvant au Canada sont expédiées directement au Canada d'un pays dont, de l'avis du sous-ministre, le gouvernement, à la fois :

a) exerce un monopole ou un quasi-monopole sur son commerce à l'exportation;

b) fixe, en majeure partie, les prix intérieurs de sorte qu'il y a lieu de croire que ceux-ci seraient différents dans un marché où joue la concurrence,

l'un des montants suivants représente la valeur normale de ces marchandises :

c) au choix du sous-ministre dans chaque cas ou série de cas, si des marchandises similaires sont vendues par des producteurs pour consommation dans un pays étranger désigné par le sous-ministre :

(i) soit le prix de ces marchandises similaires au moment de la vente des marchandises à l'importateur se trouvant au Canada, rectifié selon les modalités et dans les circonstances prévues par règlement, dans le but de traduire, en ce qui a trait à la comparaison entre le prix des marchandises vendues à l'importateur se trouvant au Canada et le prix des marchandises similaires vendues par des producteurs pour la consommation dans le pays étranger désigné par le sous-ministre, les différences existant notamment en matière de conditions de vente et de taxation,

(ii) soit la somme des montants suivants :

(A) le coût de production de ces marchandises,
(B) un montant pour les frais, notamment les frais administratifs et les frais de vente,
(d) where, in the opinion of the Deputy Minister, sufficient information has not been furnished or is not available to enable the normal value of the goods to be determined as provided in paragraph (c), the price of like goods

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

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

such price to be adjusted in the prescribed manner and circumstances to reflect the differences in terms and conditions of sale, in taxation and other differences relating to price comparability between the goods sold to the importer and the imported like goods in relation to their sale by the importer thereof. 1984, c. 25, s. 20.

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

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

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

(ii) by reference to a discount rate equal to

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

(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. 1984, c. 25, s. 21.

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.

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.
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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.

24. Le prix à l'exportation de marchandises vendues à un importateur se trouvant au Canada est, malgré toute facture ou affidavit incompatible, égal au moindre des deux montants suivants :
(a) le prix auquel l'exportateur a vendu les marchandises et rectifié par déduction des montants suivants :
   (i) les frais entraînés par la préparation des marchandises en vue de leur expédition vers le Canada et venant en sus de ceux habituellement entraînés par des ventes de marchandises similaires pour consommation dans le pays d'exportation,
   (ii) les droits et taxes imposés en vertu d'une loi fédérale ou provinciale et payés par l'exportateur, in son nom ou à sa demande,
   (iii) tous les autres frais découlant de l'exportation des marchandises ou découlant de leur expédition, depuis le lieu désigné à l'alinéa 15e) ou le lieu qui lui a été substitué en vertu de l'alinéa 16(1)a);
(b) le prix auquel l'importateur a acheté ou s'est engagé à acheter les marchandises et rectifié par déduction des montants visés aux sous-alinéas a) (i) à (iii). 1984, ch. 25, art. 24.

25. Where, in respect of goods sold to an importer in Canada,
(a) there is no exporter's sale price or no price at which the importer in Canada has purchased or agreed to purchase the goods, or
(b) the Deputy Minister is of the opinion that the export price, as determined under section 24, is unreliable
(i) by reason that the sale of the goods for export to Canada was a sale between associated persons, or
(ii) by reason of a compensatory arrangement, made between any two or more of the following, namely, the manufacturer, producer, vendor, exporter, importer in Canada and any other person, that directly or indirectly affects or relates to
   (A) the price of the goods,
   (B) the sale of the goods,

25. Si, pour des marchandises vendues à un importateur se trouvant au Canada, selon le cas :
(a) il n'y a pas de prix auquel l'exportateur a vendu les marchandises ou de prix auquel l'importateur se trouvant au Canada les a achetées ou s'est engagé à les acheter;
(b) le sous-ministre est d'avis que le prix à l'exportation des marchandises importées, établi selon l'article 24, est sujet à caution parce que, selon le cas :
(i) la vente des marchandises en vue de leur exportation vers le Canada a eu lieu entre personnes associées,
(ii) un arrangement de nature compensatoire, d'une part, a eu lieu entre au moins deux des personnes suivantes : le fabricant, le producteur, le vendeur, l'exportateur, l'importateur se trouvant au Canada et toute autre personne, et, d'autre part, a un effet ou porte sur, selon le cas :
(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,

(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. 1984, c. 25, s. 25.

26. Where the manufacturer, producer, vendor or exporter of goods sold to an importer in Canada undertakes, directly or indirectly in any manner whatever, to indemnify, pay on behalf of or reimburse the importer or purchaser in Canada of the goods for all or any part of the anti-dumping duty that may be levied on the goods,

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

vente, moins un montant égal à la somme des montants suivants :
(i) un montant pour les bénéfices réalisés sur la vente,
(ii) les frais, notamment les frais administratifs et les frais de vente,
(iii) tous les autres frais entraînés par les opérations en cause ou par la fabrication ou production des marchandises dans la fabrication desquelles elles ont été incorporées,
(iv) les frais engagés, notamment par l'exportateur ou l'importateur, pour la préparation des marchandises en vue de leur expédition vers le Canada et venant en sus de ceux habituellement entraînés par la vente de marchandises similaires pour consommation dans le pays d'exportation,
(v) tous les autres frais, y compris les droits imposés en vertu de la présente loi ou du Tarif des douanes, et les taxes :

(A) soit découlant de l'exportation des marchandises importées ou découlant de leur expédition vers le Canada depuis le lieu désigné à l'alinéa 15(e) ou le lieu qui lui a été substitué en vertu de l'alinéa 16(1)(a) et engagés, notamment par l'exportateur ou l'importateur,

(B) soit engagés lors de l'importation des marchandises ou par la suite et lors de la vente des marchandises ayant subi ces opérations ou des marchandises dans lesquelles les marchandises importées ont été incorporées ou avant cette vente;

e) dans les cas que ne prévoient pas les alinéas c) et d), le prix établi conformément aux modalités que fixe le ministre. 1984, ch. 25, art. 25.

26. Lorsque le fabricant, le producteur, le vendeur ou l'exportateur de marchandises vendues à un importateur se trouvant au Canada s'engage, de quelque façon que ce soit, à payer pour le compte de l'importateur ou de l'acheteur se trouvant au Canada ou à lui rembourser tout ou partie des droits antidumping qui peuvent être exigibles sur les marchandises ou à l'indemniser à cet égard :

a) les paiements, les remboursements ou les indemnités, selon le cas, sont réputés ne pas être des arrangements compensatoires aux termes du sous-alinéa 25b)(ii);
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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(1),

is divided by

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

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

28. For the purposes of sections 24 and 25, where the exporter of goods sold to an importer provides benefit on resale in Canada

(b) le prix à l'exportation des marchandises est celui qui est établi selon la présente loi moins le montant des paiements, des remboursements ou des indemnités. 1984, ch. 25, art. 26.

27. (1) Pour l’application des articles 24 et 25, le prix de vente unitaire de marchandises visées à ces articles est, si la vente a été faite selon des modalités de crédit autres qu’un escompte au comptant, réputé être le montant égal au quotient :

a) du total de la valeur actuelle de chaque versement du principal ou des intérêts, ou du principal et des intérêts, prévu à toute entente relative à la vente et calculé :

(i) d’une part, à la date de la vente,

(ii) d’autre part, par rapport à un taux d’escompte égal :

(A) au taux d’intérêt en vigueur à la date de la vente dans le pays où se trouve le vendeur et applicable aux prêts commerciaux qui sont faits dans ce pays dans la même monnaie que celle qui est exprimée dans l’entente et selon des modalités de crédit, autre que le taux d’intérêt, comparables,

(B) en l’absence du taux d’intérêt visé à la division (A) ou dans l’impossibilité de le déterminer, au taux d’intérêt choisi conformément aux règlements pris en vertu de l’alinéa 97(1)

sur

b) le nombre ou la quantité de marchandises vendues.

28. Pour l’application des articles 24 et 25, lorsque l’exportateur de marchandises vendues
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

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

(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. 1984, c. 25, s. 29.

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, transhipment or the like as are prescribed, be determined as if the goods were shipped directly to Canada from the first mentioned country.

(2) Where any goods
(a) are or are to be shipped indirectly to Canada from the country of origin through one or more other countries, and
(b) would, but for this section, have a normal value as computed under sections 15 to 23 that is less than the normal value would be if the country of export were the country of origin,
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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. 1984, c. 25, s. 30.

b) en outre, la valeur normale de ces marchandises, calculée conformément aux articles 15 à 23, est, abstraction faite du présent article, inférieure à ce qu’elle serait si le pays d’exportation était le même que le pays d’origine. 1984, ch. 25, art. 30.

PROCEDURE IN DUMPING AND SUBSIDY INVESTIGATIONS

Commencement of Investigation

31. (1) The Deputy Minister shall cause an investigation to be initiated respecting the dumping or subsidizing of any goods forthwith on his own initiative, or, where he 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 Deputy Minister to the complainant that the complaint is properly documented, if he is of the opinion

(a) that there is evidence that the goods have been or are being dumped or subsidized; and

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

(2) The Deputy Minister shall, 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.

(3) 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, is causing or is likely to cause material injury or has caused or is causing retardation, the Deputy Minister shall initiate an investigation respecting the dumping or subsidizing of the goods forthwith after receipt of the advice. 1984, c. 25, s. 31.

32. (1) Where the Deputy Minister 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, in the

ENQUÊTES DE DUMPING ET DE SUBVENTIONNEMENT

Ouverture d’enquête

31. (1) De sa propre initiative ou, s’il reçoit une plainte écrite concernant le dumping ou le subventionnement de marchandises, dans les trente jours suivant la date à laquelle il informe ou fait informer, par avis écrit, le plaignant que le dossier est complet, le sous-ministre fait ouvrir une enquête de dumping ou de subventionnement sur les marchandises au sujet desquelles il est d’avis, à la fois :

a) que des éléments de preuve indiquent qu’elles ont été ou sont sous-évaluées ou subventionnées;

b) que des éléments de preuve indiquent de façon raisonnable que le dumping ou le subventionnement soit cause, a causé ou est susceptible de causer un préjudice sensible, soit cause ou a causé un retard sensible.

(2) Le sous-ministre, dès réception d’un avis écrit que lui transmet le Tribunal en vertu de l’article 46, fait ouvrir une enquête sur le dumping ou le subventionnement des marchandises visées par l’avis.

(3) Dans les cas où le Tribunal, saisi du renvoi prévu au paragraphe 33(2), avise que des éléments de preuve indiquent, de façon raisonnable, que le dumping ou le subventionnement des marchandises objet du renvoi soit cause, a causé ou est susceptible de causer un préjudice sensible, soit cause ou a causé un retard sensible, le sous-ministre ouvre une enquête sur le dumping ou le subventionnement dès réception de l’avis. 1984, ch. 25, art. 31.
Partie I

Mesures spéciales d'importation

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


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

(2) Where, after receipt of a properly documented written complaint respecting the dump-

(2) Dans les cas où, en vertu de l’alinéa (1)b), il informe le plaignant que le dossier est incomplet et où il reçoit les renseignements ou pièces complémentaires, le sous-ministre est réputé recevoir la plainte à la date où il reçoit ces renseignements ou pièces sauf si, entre temps, il revient sur sa décision et, conformément à l’alinéa (1)a), informe le plaignant que le dossier est complet.

(3) Dans le cas où une plainte écrite déposée devant le Tribunal en application du paragraphe 23(1) de la Loi sur le Tribunal canadien du commerce extérieur est transmise au sous-ministre au titre des paragraphes 26(5) ou 28(1) de cette loi, celui-ci est réputé avoir reçu la plainte visée au paragraphe (1).


33. (1) S’il est saisi d’un dossier complet mais décide de ne pas faire ouvrir d’enquête sur tout ou partie des marchandises en cause, le sous-ministre fait transmettre un avis écrit et motivé de sa décision au plaignant et, dans le cas de subventionnement, au gouvernement du pays d’exportation.

(2) Si le sous-ministre, saisi d’un dossier complet, décide qu’il ne peut pas ouvrir d’enquête
ing or subsidizing of goods, the Deputy Minis­
ter 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 his opinion the evidence does not dis­
close a reasonable indication that the dumping
or subsidizing of the goods in respect of which
he has so decided has caused, is causing or is
likely to cause material injury or has caused or is
causing retardation,
(a) the Deputy Minister may, on the date of
the notice referred to in subsection (1), or
(b) the complainant may, within thirty days
after the date of the notice referred to in
subsection (1),
refer to the Tribunal the question whether the
evidence discloses a reasonable indication that
the dumping or subsidizing of the goods in
respect of which the Deputy Minister has so
decided has caused, is causing or is likely to
cause material injury or has caused or is caus­
ing retardation. 1984, c. 25, s. 33.

34. Where the Deputy Minister causes an
investigation to be initiated respecting the
dumping or subsidizing of goods,
(a) in the case of an investigation initiated
pursuant to any provision of this Act other
than section 7, the Deputy Minister shall
cause notice of the investigation
(i) to be given to the exporter, the import­
er, the government of the country of
export, the complainant, if any, and such
other persons as may be prescribed, and
(ii) to be published in the Canada
Gazette; and
(b) in the case of an investigation initiated
pursuant to subsection 31(1), the Deputy
Minister may, on the date of the notice given
to the complainant pursuant to paragraph
(a), or any person or government that was
given notice pursuant to paragraph (a) may,
within thirty days from the date of the
notice, refer to the Tribunal the question
whether the evidence discloses a reasonable
indication that the dumping or subsidizing of
any goods in respect of which the Deputy
Minister has caused the investigation to be
initiated has caused, is causing or is likely to
cause material injury or has caused or is
causing retardation. 1984, c. 25, s. 34.
Partie I
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Termination of investigation

35. (1) Where, at any time before making a preliminary determination in an investigation respecting the dumping or subsidizing of goods,

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

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

(ii) the margin of dumping of or the amount of the subsidy on the goods or the actual or potential volume of dumped or subsidized goods is negligible, or

(b) in the case of an investigation initiated pursuant to subsection 31(1) with respect to which a reference has not been made to the Tribunal pursuant to paragraph 34(b), the Deputy Minister comes to the conclusion in respect of some or all of those goods that the evidence does not disclose a reasonable indication that the dumping or subsidizing thereof has caused, is causing or is likely to cause material injury or has caused or is causing retardation,

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

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

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

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

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

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

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

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

(b) where a reference is made to the Tribunal, unless and until the Tribunal advises that in its opinion the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused, is causing or is likely to cause material injury or has caused or is causing retardation. 1984, c. 25, s. 35.

Termination of investigation

36. Where a reference is made to the Tribunal pursuant to paragraph 34(b) and the Tribunal advises with respect to any of the goods that are the subject of the reference that the evidence does not disclose a reasonable indication that the dumping or subsidizing of those goods has caused, is causing or is likely to cause material injury or has caused or is causing retardation, the Deputy Minister shall terminate the investigation in respect of those goods forthwith after receipt of the advice and shall cause notice of the termination to be given and published as provided in paragraph 34(a). 1984, c. 25, s. 36.

Tribunal to give advice

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

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

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

(i) without holding any hearings thereon,

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

(3) Le sous-ministre ne peut clore une enquête à l'égard de laquelle l'avis prévu à l'alinéa (2)a) a été donné pour la seule raison qu'il en est arrivé à la conclusion visée par l'alinéa (1)b) :

a) en l'absence de renvoi au Tribunal dans les trente jours visés à l'alinéa (2)b), qu'à l'expiration de ces trente jours;

b) en cas de renvoi au Tribunal, que si le Tribunal lui fait savoir qu'il partage sa conclusion. 1984, ch. 25, art. 35.

36. Si le Tribunal, saisi d'un renvoi en vertu de l'alinéa 34b), fait savoir au sous-ministre que, du moins pour certaines marchandises, les éléments de preuve présentés n'indiquent pas, de façon raisonnable, que le dumping ou le subventionnement des marchandises en cause soit cause, a causé ou est susceptible de causer un préjudice sensible, soit cause ou a causé un retard sensible, celui-ci clôt l'enquête sur ces marchandises dès réception de l'avis et fait donner et publier un avis de clôture selon les modalités prévues à l'alinéa 34a). 1984, ch. 25, art. 36.

37. En cas de renvoi au Tribunal aux termes des articles 33, 34 ou 35 sur toute question portée devant le sous-ministre :

a) le sous-ministre fournit sans délai au Tribunal tous les renseignements et pièces qu'exigent les règles du Tribunal;

b) le Tribunal donne son avis :

(i) sans audience,

(ii) en se fondant sur les renseignements dont disposait le sous-ministre pour en arriver à une décision ou conclusion,

(iii) dès qu'il est saisi mais, au plus tard, dans les trente jours suivant la date où il est saisi. 1984, ch. 25, art. 37.
Partie I Mesures spéciales d'importation

Preliminary Determination

38. (1) Subject to sections 39 and 40, within ninety days after the initiation of an investigation respecting the dumping or subsidizing of goods, the Deputy Minister shall make a preliminary determination of dumping or subsidizing with respect to the goods in respect of which the investigation has not been terminated pursuant to section 35 or 36 after estimating and specifying, in relation to each importer 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 the 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 an export subsidy, specifying that there is an export subsidy on the goods and estimating the amount of the export subsidy thereon; and

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

(2) The Deputy Minister shall not specify or estimate anything pursuant to subparagraph (1)(b)(iii) where he 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 surrounding their origin, the Deputy Minister is of the opinion that the goods do not constitute dumping or subsidizing.

Décision provisoire

38. (1) Sous réserve des articles 39 et 40, dans les quatre-vingt-dix jours suivant l'ouverture d'une enquête de dumping ou de subventionnement, le sous-ministre rend une décision provisoire de dumping ou de subventionnement concernant les marchandises au sujet desquelles il n'a pas eu lieu la clôture d'enquête prévue aux articles 35 ou 36 après avoir, pour chacun des importateurs des marchandises pour lesquelles l'enquête est menée :

a) dans le cas de marchandises sous-évaluées :
   (i) fait l'estimation de la marge de dumping des marchandises, compte tenu des renseignements dont il dispose,
   (ii) précisés les marchandises visées par la décision;

b) dans le cas de marchandises subventionnées :
   (i) fait l'estimation du montant de la subvention concernant les marchandises, compte tenu des renseignements dont il dispose,
   (ii) précisés les marchandises visées par la décision,
   (iii) sous réserve du paragraphe (2), précisés, s'il y a lieu, que les marchandises font l'objet d'une subvention à l'exportation et le montant estimatif de la subvention;

c) dans le cas de marchandises sous-évaluées ou subventionnées, précisés le nom de la personne qu'il croit être l'importateur, compte tenu des renseignements dont il dispose à la date de l'estimation visée au sous-alinéa a)(i) ou b)(i), selon le cas.

2) II n'y a ni précision ni estimation aux termes du sous-alinéa (1)b)(iii) si, eu égard au pays qui octroie la subvention, à la nature des marchandises et aux circonstances entourant l'octroi, le sous-ministre est d'avis que cet octroi n'est pas contraire aux obligations de ce
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Cumstances 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.

Part I

(3) Where the Deputy Minister makes a preliminary determination of dumping or subsidizing in respect of goods, he shall

(a) cause notice of the determination to be given and published as provided in paragraph 34(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. 1984, c. 25, s. 38.

(3) Dès qu'il rend une décision provisoire de dumping ou de subventionnement, le sous-ministre :

a) en fait donner et publier avis selon les modalités prévues à l'alinéa 34a);

b) en fait déposer auprès du secrétaire un avis motivé accompagné des pièces requises en l'espèce par les règles du Tribunal. 1984, ch. 25, art. 38.

39. (1) Subject to section 40, where, in any investigation respecting the dumping or subsidizing of goods, the Deputy Minister, before the expiration of the 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(a) that by reason of

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

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

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

(d) any other circumstance specified in the notice that, in the opinion of the Deputy Minister, makes it unusually difficult for him to decide within those 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.

39. (1) Sous réserve de l'article 40, le délai prévu au paragraphe 38(1) est porté à cent trente-cinq jours si le sous-ministre, avant l'expiration des quatre-vingt-dix jours prévus à ce paragraphe, indique, dans un avis écrit donné aux personnes et au gouvernement visés à l'alinéa 34a), que la détermination visée à l'alinéa d) ci-dessous ne sera pas rendue dans le délai prévu pour l'une ou l'autre des raisons suivantes :

a) la complexité ou le caractère inédit des points soulevés par l'enquête;

b) la diversité des marchandises ou le nombre de personnes touchées par l'enquête;

c) les difficultés rencontrées pour obtenir des éléments de preuve satisfaits;

d) toute autre circonstance qui, selon le sous-ministre, fait qu'il lui est exceptionnellement difficile de déterminer, dans le délai imparti, s'il doit clore l'enquête pour tout ou partie des marchandises, rendre une décision provisoire de dumping ou de subventionnement conformément au paragraphe 38(1) ou accepter un ou des engagements.

(2) Where the Deputy Minister causes notice to be given pursuant to subsection (1), he shall cause a notice to the same effect to be published in the Canada Gazette forthwith. 1984, c. 25, s. 39.

(2) Dans le cas de prorogation prévu au paragraphe (1), le sous-ministre fait publier, sans délai, un avis à cet effet dans la Gazette du Canada. 1984, ch. 25, art. 39.
40. Where, in any investigation respecting
the dumping or subsidizing of goods, notice is
given and published pursuant to paragraph
35(2)(a), there shall not be counted as one of
the ninety days referred to in section 38 or as
one of the one hundred and thirty-five days
referred to in subsection 39(1)
(a) in any case where the question referred
to in that paragraph is not referred to the
Tribunal, any of the thirty days referred to in
paragraph 35(2)(b); or
(b) in any other case, any day in the period
commencing on the day following the date of
the notice given pursuant to paragraph
35(2)(a) and ending on the day on which the
Tribunal renders its advice on the question
referred to in paragraph 35(2)(b). 1984, c. 25, s. 40.

41. (1) Within ninety days after making, in
any investigation, a preliminary determination
of dumping or subsidizing in respect of goods,
the Deputy Minister shall
(a) where, on the evidence available to him,
he is satisfied, in relation to each importer of
goods in respect of which the investigation is
made,
(i) that the goods have been or are being
dumped or subsidized, and
(ii) that neither the margin of dumping of
or the amount of the subsidy on the goods
nor the actual or potential volume of
dumped or subsidized goods is negligible,
make a final determination of dumping or
subsidizing with respect to the goods after
specifying, in relation to each such importer,
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 the sub-
sidy on the goods, and
(C) subject to subsection (2), where the
whole or any part of the subsidy on the
goods is an export subsidy, specifying
the amount of the export subsidy on the
goods; or

40. En cas d'avis prévu à l'alinéa 35(2)a), le
délai visé à l'article 38 ou au paragraphe 39(1)
ne comprend :
(a) ni le délai visé à l'alinéa 35(2)b), s'il n'y a
pas eu le renvoi prévu à cet alinéa;
(b) ni, dans le cas d'un renvoi prévu à l'alinéa
35(2)b), la période commençant le lende-
main de la date de l'avis donné conformé-
ment à l'alinéa 35(2)a) et se terminant à la
date à laquelle le Tribunal donne son avis
après avoir été saisi du renvoi. 1984, ch. 25,
art. 40.

41. (1) Dans les quatre-vingt-dix jours sui-
vant sa décision provisoire de dumping ou de
subventionnement, le sous-ministre, selon le
cas :
(a) si, au vu des éléments de preuve dont il
dispose, il constate, pour chacun des importa-
teurs des marchandises pour lesquelles l'en-
quête est menée, les faits suivants :
(i) les marchandises ont été ou sont sous-
valuées ou subventionnées,
(ii) la marge de dumping de ces marchan-
dises ou le montant de la subvention
octroyée pour elles ainsi que leur volume
réel ou éventuel ne sont pas négligeables,
rend une décision définitive de dumping ou
de subventionnement après avoir précisé,
pour chacun des importateurs :
(iii) dans le cas de marchandises sous-éva-
luées, les marchandises objet de la décision
et leur marge de dumping,
(iv) dans le cas de marchandises subven-
tionnées :
(A) les marchandises objet de la déci-
sion,
(B) le montant de la subvention
octroyée pour elles,
(C) sous réserve du paragraphe (2), le
montant, s'il y a lieu, de la subvention à
l'exportation octroyée pour elles:
b) fait clore l'enquête sur les marchandises
au sujet desquelles, au vu des éléments de
preuve dont il dispose, il n'y a pas d'importa-

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

Exception

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

Notice of final determination

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

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

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

Notice of termination

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

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

(b) given in writing to the Secretary. 1984, c. 25, s. 41.

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

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

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

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

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

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

41.1 (1) Après annulation d'une décision définitive rendue au titre de l'alinéa 41(1)a) ou de la décision de clore l'enquête rendue au titre de l'alinéa 41(1)b) et renvoi, sur demande faite au titre de l'article 96.1, de l'affaire au sous-ministre, celui-ci réexamine l'affaire, rend une nouvelle décision, fait donner et publier un avis correspondant conformément à l'alinéa 34a) et en fait transmettre une copie au secrétaire.
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41(1)(b) is referred back to the Deputy Minister pursuant to an order under subsection 77.15(3) or (4), the Deputy Minister shall

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

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

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

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

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

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

(c) section 41 shall again apply as described in subsection (3); and

(d) sections 42 and 43 shall again apply in respect of the goods to which the decision relates as if those sections had not previously applied in respect of those goods, except that the action that the Tribunal is required by those sections to take shall, notwithstanding anything therein, be taken by the Tribunal within one hundred and twenty days after the day on which the order referring the
decision back to the Deputy Minister was made.
1988, c. 65, s. 31.

INQUIRIES BY TRIBUNAL

42. (1) The Tribunal, forthwith after receipt by the Secretary pursuant to subsection 38(3) of a notice of a preliminary determination of dumping or subsidizing in respect of goods, 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, is causing or is likely to cause material injury or has caused or is causing retardation, or

(ii) would have caused material 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 material injury or would have caused material 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 material injury, and

(ii) material 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 material injury; and

ENQUÊTES MENÉES PAR LE TRIBUNAL

42. (1) Dès réception par le secrétaire de l'avis de décision provisoire de dumping ou de subventionnement prévu au paragraphe 38(3), le Tribunal fait enquête sur celles parmi les questions suivantes qui sont indiquées dans les circonstances, à savoir :

a) si le dumping des marchandises en cause ou leur subventionnement :

(i) soit cause, a causé ou est susceptible de causer un préjudice sensible, soit cause ou a causé un retard sensible,

(ii) soit aurait causé un préjudice sensible ou un retard sensible sans l'application de droits provisoires aux marchandises;

b) si, dans le cas de marchandises sous-évaluées objet de la décision provisoire :

(i) d'une part :

(A) ou bien a eu lieu une importation considérable de marchandises similaires sous-évaluées dont le dumping a causé un préjudice sensible ou en aurait causé si des mesures antidumping n'avaient pas été prises.

(B) ou bien l'importateur des marchandises était ou aurait dû être au courant du dumping que pratiquait l'exportateur et du fait que ce dumping causerait un préjudice sensible,

(ii) d'autre part, un préjudice sensible a été causé du fait que les marchandises sous-évaluées :

(A) soit représentent une importation massive,

(B) soit appartiennent à une série d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte,

et le Tribunal estime nécessaire que soient imposés des droits sur les marchandises importées afin de prévenir la réapparition du préjudice;

c) si, dans le cas de marchandises subventionnées objet de la décision provisoire pour lesquelles marchandises une subvention à l'exportation a été octroyée :
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(c) in the case of any subsidized goods to which the preliminary determination applies where a subsidy on the goods is an export subsidy, as to whether

(i) material 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 material injury.

(2) The Tribunal shall, forthwith after receipt by the Secretary pursuant to paragraph 52(1)(f) of a notice of a preliminary determination of dumping or subsidizing in respect of goods with respect to which an undertaking or undertakings have been terminated, make inquiry as to whether the dumping or subsidizing

(a) has caused, is causing or is likely to cause material injury or has caused or is causing retardation; 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, material injury except for that acceptance.

(3) The Tribunal, in considering any question relating to the production in Canada of any goods or the establishment in Canada of that production, shall take fully into account the provisions of

(a) in a dumping case, paragraph 1 of Article 4 of the Agreement signed at Geneva, Switzerland, on December 17, 1979 on Implementation of Article VI of the General Agreement on Tariffs and Trade; and

(b) in a subsidy case, paragraph 7 of Article 6 of the Subsidies and Countervailing Duties Agreement. 1984, c. 25, s. 42.

Tribunal to be guided by Canada's obligations

Applicabilité des accords internationaux

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 dump-

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(i) d'une part, un préjudice sensible a été causé du fait que les marchandises subventionnées :

(A) soit représentent une importation massive,

(B) soit appartiennent à une série d'importations, massives dans l'ensemble et échelonnées sur une période relativement courte,

(ii) d'autre part, des droits compensateurs devraient être imposés sur les marchandises subventionnées afin de prévenir la réapparition du préjudice.

(2) Dès réception par le secrétaire, aux termes de l'alinéa 52(1)(f), d'un avis de décision provisoire de dumping ou de subventionnement relatif à des marchandises pour lesquelles un ou des engagements ont été terminés, le Tribunal détermine si le dumping ou le subventionnement :

a) soit cause, a causé ou est susceptible de causer un préjudice sensible, soit cause ou a causé un retard sensible;

b) soit aurait causé, pendant la période suivant l'acceptation de l'engagement ou des engagements, selon le cas, un préjudice sensible sans l'acceptation de cet ou ces engagements.

(3) En examinant les questions relatives à la production ou à la mise en production de marchandises au Canada, le Tribunal tient compte des dispositions suivantes :

a) s'il s'agit d'un dumping, le paragraphe 1 de l'article 4 de l'Accord relatif à la mise en œuvre de l'article VI de l'Accord général sur les tarifs douaniers et le commerce, signé à Genève (Suisse) le 17 décembre 1979;

b) s'il s'agit d'un subventionnement, le paragraphe 7 de l'article 6 de l'Accord. 1984, ch. 25, art. 42.

43. (1) Dans le cas des enquêtes visées à l'article 42, le Tribunal rend, à l'égard de marchandises objet d'une décision définitive de dumping ou de subventionnement, les ordon-
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ing 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.

(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.

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

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

(b) not later than 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.

(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.

44. (1) Where, pursuant to an application under section 28 of the Federal Court Act or 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

nances ou les conclusions indiquées dans chaque cas en y précisant les marchandises concernées et, le cas échéant, leur fournisseur et leur pays d'exportation. Ces ordonnances ou conclusions sont rendues dès réception par le secrétaire de l'avis de cette décision définitive mais, au plus tard, dans les cent vingt jours suivant la date à laquelle le secrétaire reçoit l'avis de décision provisoire.

(1.1) Lorsque l'enquête vise diverses marchandises dont certaines proviennent des États-Unis, le Tribunal rend une ordonnance ou des conclusions distinctes à l'égard de celles-ci.

(2) Le secrétaire envoie, par courrier recommandé, au sous-ministre, à l'importateur, à l'exportateur et aux autres personnes que prévoient les règles du Tribunal, copie des textes suivants :

a) dès qu'elles ont été rendues en vertu du présent article, l'ordonnance ou les conclusions du Tribunal;

b) dans les quinze jours suivant la date de l'ordonnance ou des conclusions, l'exposé des motifs correspondants.

(3) Le secrétaire fait publier dans la Gazette du Canada un avis de toute ordonnance ou de toutes conclusions rendues en application du présent article.


Recommence-ment of inquiry where order or finding set aside by Court

44. (1) En cas d'annulation, à la suite d'une demande faite en vertu des articles 28 de la Loi sur la Cour fédérale ou 96.1 de la présente loi, de son ordonnance ou de ses conclusions pour tout ou partie des marchandises en cause, le Tribunal :

a) si l'affaire lui est renvoyée pour décision, rouvre sans délai l'enquête tenue sur les marchandises ou la partie en cause;

b) dans les autres cas, décide, dans les trente jours suivant le jugement définitif sur la demande, si l'enquête devrait être rouverte et, le cas échéant, rouvre l'enquête sans délai.

Il rend aussitôt une nouvelle ordonnance ou de nouvelles conclusions compatibles avec le jugement définitif sur la demande mais, au plus tard, cent vingt jours suivant :
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.

(2) Where an inquiry is recommenced pursuant to subsection (1) with respect to any goods, (a) the Secretary shall forthwith give notice of the recommencement of the inquiry with respect to those goods to every person to whom he forwarded, pursuant to subsection 43(2), a copy of the order or finding with respect to which the application under section 28 of the Federal Court Act was made; and

(b) the Tribunal shall, for the purpose of making the new order or finding referred to in subsection (1), take any further steps in the inquiry, whether by way of hearing or re-hearing any matter, the receipt of additional evidence or otherwise, that it considers necessary or advisable.

R.S., 1985, c. S-15, s. 44; 1988, c. 65, s. 33.

Where imposition of duty not in public interest

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

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

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


45. (1) Dans les cas où, à l’issue d’une enquête menée en vertu de l’article 42, il rend une ordonnance ou des conclusions visées aux articles 3 à 6 mais estime que l’assujettissement des marchandises en cause à des droits antidumping ou compensateurs ou au plein montant des droits prévus à ces articles serait ou pourrait être contraire à l’intérêt public, le Tribunal, aussitôt après avoir rendu l’ordonnance ou la conclusion :

(a) transmet un rapport au ministre des Finances énonçant son opinion, faits et motifs à l’appui; 

(b) fait publier le texte de son rapport dans la Gazette du Canada.
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(2) Where any person interested in an inquiry referred to in subsection (1) makes a request to the Tribunal for an opportunity to make representations to the Tribunal on the question whether the Tribunal should, if it makes an order described in any of sections 3 to 6 with respect to any goods in respect of which the inquiry is being made, make a report pursuant to paragraph (1)(a) with respect to those goods, the Tribunal may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping or subsidizing of such goods. 1984, c. 25, s. 45.

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, is causing or is likely to cause material injury or has caused or is causing retardation,
the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping or subsidizing of such goods. 1984, c. 25, s. 46.

47. Subject to Part II and subsections 76(2.1) and (2.2), an order or finding made by the Tribunal with respect to any dumped or subsidized goods, other than an order or finding described in any of sections 3 to 6, terminates all proceedings under this Act respecting the dumping or subsidizing of the goods. R.S., 1985, c. S-15, s. 47; 1988, c. 65, s. 34.

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

UNDEendentings

49. (1) Subject to subsection (2), the Deputy Minister may, in any investigation respecting the dumping or subsidizing of goods, accept an undertaker's undertaking.

(2) Where any person interested in an inquiry referred to in subsection (1) makes a request to the Tribunal for an opportunity to make representations to the Tribunal on the question whether the Tribunal should, if it makes an order described in any of sections 3 to 6 with respect to any goods in respect of which the inquiry is being made, make a report pursuant to paragraph (1)(a) with respect to those goods, the Tribunal may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping or subsidizing of such goods. 1984, c. 25, s. 45.

46. Si, au cours de l'enquête visée à l'article 42 au sujet du dumping ou du subventionnement de marchandises objet d'une décision provisoire prévue à la présente loi, le Tribunal est d'avis :
(a) d'une part, que les éléments de preuve indiquent que des marchandises dont l'utilisation et les autres caractéristiques sont très proches de celles qui font l'objet de la décision provisoire ont été ou sont sous-évaluées ou subventionnées;
(b) d'autre part, que les éléments de preuve indiquent de façon raisonnable que le dumping ou le subventionnement visé à l'alinéa a) soit cause, a causé ou est susceptible de causer un préjudice sensible, soit cause ou a causé un retard sensible,

il peut, par avis écrit donnant la description de ces marchandises, ordonner au sous-ministre de faire ouvrir une enquête sur leur dumping ou leur subventionnement. 1984, ch. 25, art. 46.

47. Sous réserve de la partie II et des paragraphes 76(2.1) et (2.2) et exception faite des ordonnances ou conclusions visées à l'un des articles 3 à 6, les ordonnances ou conclusions du Tribunal closent les procédures relatives au dumping ou au subventionnement des marchandises en cause.

48. [Abrogé, L.R. (1985), ch. 47 (4e suppl.), art. 52]
undertaking or undertakings with respect to dumped or subsidized goods where he 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 material injury or retardation that is being or any material injury that is likely to be caused by the dumping or subsidizing.

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

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

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

(ii) where the undertaking is given by the government of a country, the price at which the goods, when exported to Canada from that country, will be sold to importers in Canada, to increase by more than the estimated margin of dumping of the goods or the estimated amount of the subsidy thereon;

(b) where he has made a preliminary determination of dumping or subsidizing with respect to the goods; 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. 1984, c. 25, s. 49.

50. Forthwith after accepting, in any investigation, an undertaking or undertakings with respect to dumped or subsidized goods, the Deputy Minister shall

(a) cause further action in the investigation to be suspended; and

(b) accept the undertaking or undertakings which, d'après lui:

(a) soit éliminent la marge de dumping des marchandises en cause ou la subvention qui est octroyée pour elles:

(i) dans le cas où l'engagement est pris par un exportateur, si les marchandises sont vendues par l'exportateur à des importateurs se trouvant au Canada,

(ii) dans le cas où l'engagement est pris par le gouvernement d'un pays d'où les marchandises sont exportées vers le Canada, si elles sont exportées de ce pays vers le Canada conformément à des ventes par des exportateurs à des importateurs se trouvant au Canada;

(b) soit font disparaître le préjudice sensible ou le retard sensible que cause le dumping ou le subventionnement ou le préjudice sensible qu'il est susceptible de causer.

(2) Le sous-ministre ne peut accepter d'engagement :

a) que s'il est d'avis que l'observation de l'engagement ne fera pas augmenter d'un montant plus élevé que le montant estimatif de la marge de dumping ou celui de la subvention :

(i) dans le cas où l'engagement est pris par un exportateur, le prix auquel les marchandises sont vendues aux importateurs se trouvant au Canada par l'exportateur,

(ii) dans le cas où l'engagement est pris par le gouvernement d'un pays, le prix auquel les marchandises seront vendues à des importateurs se trouvant au Canada lors de leur exportation de ce pays;

b) s'il a rendu une décision provisoire de dumping ou de subventionnement au sujet des marchandises en cause;

(iii) s'il est d'avis qu'il ne serait pas possible d'exécuter l'engagement ou les engagements. 1984, ch. 25, art. 49.
51. (1) Where, 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(b), the Deputy Minister receives 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,
a written request that the undertaking or any such undertaking, as the case may be, be terminated, the Deputy Minister shall forthwith terminate the undertaking in respect of which the request was received.

(2) Where the Deputy Minister terminates any undertaking pursuant to subsection (1), he shall forthwith cause the investigation to be resumed with respect to all the goods to which the investigation related when he accepted the undertaking or undertakings, as the case may be, and shall cause notice of the resumption of the investigation to be given as provided in paragraph 34(a). 1984, c. 25, s. 51.

52. (1) Where, at any time after he has accepted an undertaking or undertakings with respect to any dumped or subsidized goods that were the subject of an investigation, the Deputy Minister
(a) is satisfied that the undertaking or any such undertaking, as the case may be, has been or is being violated,
(b) is of the opinion that he would not have accepted the undertaking or undertakings if the information available to him at that time had been available to him when he accepted the undertaking, or
(c) is satisfied that he would not have accepted the undertaking or undertakings if the circumstances prevailing at that time had
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prevailed when he accepted the undertaking or undertakings, as the case may be, he shall forthwith

(d) terminate the undertaking or undertakings,

(e) make a preliminary determination of dumping or subsidizing with respect to each of the goods that were the subject of the investigation in accordance with

(i) in the case of dumped goods, paragraphs 38(1)(a) and (c), and

(ii) in the case of subsidized goods, paragraphs 38(1)(b) and (c),

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

(g) cause the investigation with respect to the goods referred to in paragraph (e) to be resumed.

(2) Where, in any investigation respecting the dumping or subsidizing of goods, a number of undertakings are accepted by the Deputy Minister under section 49 and any one or more of those undertakings have been or are being violated, the Deputy Minister shall not, unless he sees good reason to the contrary, take any action under subsection (1) if the undertakings that have not been and are not being violated account for substantially all the imports into Canada of the goods. 1984, c. 25, s. 52.

53. (1) The Deputy Minister shall review an undertaking before the expiration of three years from the date on which he accepted it and before the expiration of each subsequent period, if any, for which he renews it pursuant to this section and if, on any such review, he is satisfied

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

(b) that he is not required to terminate it under section 52,

he shall renew the undertaking for a further period of not more than three years.

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

53. (1) Le sous-ministre réexamine tout engagement avant l'expiration des trois ans suivant la date de son acceptation ou, en cas de renouvellement aux termes du présent article, avant l'expiration de chaque période de renouvellement; il renouvelle l'engagement pour une durée maximale de trois ans s'il constate:

(a) d'une part, que l'engagement a encore sa raison d'être;

(b) d'autre part, qu'il n'est pas tenu d'y mettre fin en vertu de l'article 52.

(2) Tout engagement qui n'est pas renouvelé aux termes du paragraphe (1) expire à la fin de la période avant l'expiration de laquelle il devait faire l'objet d'un réexamen.
(3) Where an undertaking expires by reason of subsection (2), the expiration terminates all proceedings under this Act respecting the dumping or subsidizing of the goods to which the undertaking relates, unless, in any case where the Deputy Minister has accepted two or more undertakings, the Deputy Minister, for good reason, otherwise directs.

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

R.S., 1985, c. S-15, s. 53; 1988, c. 65, s. 35.

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

(a) the Deputy Minister shall
   (i) reconsider the matter and make a new decision, and
   (ii) cause notice of the action taken pursuant to subparagraph (i) to be given and published as provided in paragraph 34(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 is made and continues in effect until action is taken pursuant to subparagraph (a)(i).

(2) Where a decision under subsection 53(1) to renew or not to renew an undertaking is referred back to the Deputy Minister pursuant to an order under subsection 77.15(3) or (4),

(a) the Deputy Minister shall
   (i) reconsider the decision and confirm, rescind or vary it, and
   (ii) cause notice of the action taken pursuant to subparagraph (i) to be given and published as provided in paragraph 34(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).

(3) La fin d’un engagement aux termes du paragraphe (2) clôture les procédures relatives au dumping ou au subventionnement des marchandises en cause sauf si le sous-ministre, dans les cas où il a accepté plusieurs engagements, prend une décision contraire pour de bonnes raisons.

(4) Le sous-ministre fait donner et publier conformément à l’alinéa 34a) et déposer auprès du secrétaire avis de la décision de renouveler ou non l’engagement rendue en application du paragraphe (1).


53.1 (1) Après annulation d’une décision de renouveler ou non un engagement rendue au titre du paragraphe 53(1) et renvoi, sur demande faite au titre de l’article 96.1, de l’affaire au sous-ministre, celui-ci réexamine l’affaire, rend une nouvelle décision, fait donner et publier un avis correspondant conformément à l’alinéa 34a) et le fait déposer auprès du secrétaire. L’engagement est, au besoin, censé avoir été renouvelé à la date de l’ordonnance de renvoi et est maintenu jusqu’à ce que la nouvelle décision soit rendue.

(2) Après le renvoi à lui, par suite d’une ordonnance rendue au titre des paragraphes 77.15(3) ou (4), d’une telle décision, le sous-ministre réexamine celle-ci et la confirme, l’annule ou la modifie, fait donner et publier un avis correspondant conformément à l’alinéa 34a) et le fait déposer auprès du secrétaire et du secrétaire canadien. L’engagement est, au besoin, censé avoir été renouvelé à la date de l’ordonnance de renvoi et est maintenu jusqu’à cette confirmation, cette annulation ou cette modification.

1988, ch. 65, art. 36.
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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.

54. Il est toujours possible, sous réserve des paragraphes 53(1) et (2), de modifier un engagement, conformément à ses modalités. 1984, ch. 25, art. 54.

DETERMINATIONS BY DESIGNATED OFFICER

55. Where the Deputy Minister
(a) has made a final determination of dumping or subsidizing under subsection 41(1) with respect to any goods, and
(b) has received from the Tribunal an order or finding described in any of sections 4 to 6 with respect to the goods to which the final determination applies,
the Deputy Minister shall cause a designated officer to determine, not later than six months after the date of the order or finding,
(c) in respect of any goods released during the period described in subparagraph 4(b)(i) or (ii) or paragraph 5(b) or 6(b), whichever is applicable, that appear to be goods of the same description as goods described in the order or finding, whether the goods so released 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, if any, of the 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.


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

Révisions et appels

Révisions par l’agent désigné et par le sous-ministre

56. (1) Lorsque des marchandises sont importées après la date de l’ordonnance ou des conclusions du Tribunal ou celle du décret imposant des droits compensateurs, prévu à l’article 7, est définitive une décision rendue par un agent des douanes dans les trente jours après déclaration en détail des marchandises aux termes des paragraphes 32(1), (3) ou (5) de la Loi sur les douanes et qui détermine :
(a) la question de savoir si les marchandises sont de même description que des marchan-
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.

(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.

(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.

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

(a) in accordance with a request made pursuant to subsection 56(1.1), or
(b) in any case where he deems it advisable, within two years after the determination, unless the Deputy Minister has previously re-determined the determination pursuant to section 59.

R.S., 1985, c. S-15, s. 57; R.S., 1985, c. 1 (2nd Supp.), s. 204; 1988, c. 65, s. 38.

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.

(2) Notwithstanding subsection (1),
(a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within 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 Deputy Minister for a re-determination, if the importer has paid all duties owing on the goods; and
(b) where a determination or re-determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.


59. (1) Subject to subsection (3), the Deputy Minister may re-determine any determination or re-determination referred to in section 55, 56 or 57 made by a designated officer or other customs officer in respect of any imported goods
(a) in accordance with a request made pursuant to subsection 58(2);
(b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in accounting for the goods under subsection 32(1), (3) or (5) of the Customs Act or in obtaining release of the goods;
(c) at any time, if subsection 2(6) or section 26 applies or at any time becomes applicable in respect of the goods;
(d) at any time, for the purpose of giving effect to a decision of the Tribunal, the Fed-

58. (1) Les décisions ou révisions de l'agent désigné prévues aux articles 55 ou 57 sont définitives en ce qui a trait aux marchandises importées.

(2) Par dérogation au paragraphe (1), l'importateur de marchandises visées par la décision ou la révision peut, après avoir payé les droits exigibles sur celles-ci et dans les quatre-vingt-dix jours suivant la date de la décision ou de la révision, demander au sous-ministre, par écrit et selon les modalités de forme prescrites par celui-ci et les autres modalités réglementaires — relatives notamment aux renseignements à fournir —, de procéder à un réexamen. Dans le cas de marchandises des États-Unis, la demande peut être faite, sans égard à ce paiement, par le gouvernement des États-Unis ou le producteur, le fabricant ou l'exportateur des marchandises.

Mandatory re-determination

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

(3) On a request made on or after the coming into force of this subsection that was made under subsection 58(2) to re-determine a determination under section 55 or a re-determination under section 57, the Deputy Minister shall

(a) in the case of a determination under section 55 or a re-determination under paragraph 57(6), re-determine the determination or re-determination within one year after the request under subsection 58(2) was made;
(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(1.1) was made; and
(c) in the case of a re-determination under paragraph 57(a) as it read immediately before the date on which this subsection comes into force, re-determine the re-determination within one year after that date.

Notice of re-determination

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

Presumption

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

Mesures spéciales d'importation

Chap. S-15


Effect of re-determination

60. 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 the subsidy or export subsidy on the goods has been made,

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

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

if on the re-determination it is determined that the additional duty is payable or that the whole or the part of the duty paid was not payable, as the case may be. 1984, c. 25, s. 60.

Appeal to Canadian International Trade Tribunal

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

(2) Notice of the hearing of an appeal under subsection (1) shall be published in the Canada Gazette at least twenty-one days prior to the day of the hearing, and any person who on or before that day enters an appearance with the Secretary of the Tribunal may be heard on the appeal.

(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.


Effect de la révision ou du réexamen

60. Les révisions ou réexamens prévus aux articles 57 ou 59 et statuant sur la question visée à l'alinéa 56(1)a), ou sur la valeur normale des marchandises en cause, leur prix à l'exportation, le montant de la subvention ou de la subvention à l'exportation octroyées pour elles entraînent, selon que des droits supplémentaires sont exigibles ou que tout ou partie des droits payés n'était pas exigible, l'une des conséquences suivantes:

a) acquittement par l'importateur des droits supplémentaires payables sur les marchandises;

b) restitution totale ou partielle à l'importateur, sans délai, des droits déjà payés sur ces marchandises. 1984, ch. 25, art. 60.

Appel devant le Tribunal canadien du commerce extérieur

61. (1) Quiconque s'estime lésé par un réexamen effectué en application de l'article 59 peut en appeler au Tribunal en déposant, auprès du sous-ministre et du secrétaire du Tribunal, dans les quatre-vingt-dix jours suivant la date du réexamen, un avis d'appel.

(2) L'avis d'audition d'un appel interjeté en application du paragraphe (1) est publié dans la Gazette du Canada au moins vingt-et-un jours avant la date de l'audition. Peuvent être entendues les personnes qui, au plus tard le jour de l'audition, déposent auprès du secrétaire du Tribunal un acte de comparution.

(3) Le Tribunal, saisi d'un appel en vertu du paragraphe (1), peut rendre les ordonnances ou conclusions indiquées en l'espèce et, notamment, déclarer soit quels droits sont payables, soit qu'aucun droit n'est payable sur les marchandises visées par l'appel. Les ordonnances, conclusions et déclarations du Tribunal sont définitives, sauf recours prévu à l'article 62.

Chap. S-15
Special Import Measures

Appeal to Federal Court

62. (1) Any of the parties to an appeal under section 61, namely,
(a) the person who appealed,
(b) the Deputy Minister, or
(c) any person who entered an appearance in accordance with subsection 61(2), if the person has a substantial interest in the appeal and has obtained leave from the Court or a judge thereof,
may, within ninety days after the making of an order or finding under subsection 61(3), appeal therefrom to the Federal Court on any question of law.

(2) The Federal Court 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.


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

(2) Any person who is given a refund under paragraph 60(6) of an amount paid shall be given, in addition to the refund, interest at the prescribed rate or at a rate determined in the prescribed manner in respect of each month or fraction of a month between the time the amount was paid and the time the refund is given, calculated on the amount of the refund.

(3) Where interest owing under this section is less than ten dollars, no interest shall be paid.
R.S., 1985, c. 1 (2nd Supp.), s. 207.

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

Orders and findings of Tribunal final

76. (1) Subject to this section, subsection 61(3), paragraph 91(1)(g), section 96.1 and Part II, every order or finding of the Tribunal under this Act is final and conclusive.

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

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

(2.2) Where an order or finding of the Tribunal is referred back to the Tribunal pursuant to an order under subsection 77.15(3) or (4), the Tribunal shall review the order or finding and, in making such a review, may re-hear any matter before deciding it.

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

Order of refusal

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

Refusal

Refusal

Completion of review

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

Mesures spéciales d'importation

Chap. S-15

Finality and Review of Orders and Findings

Caractère définitif des ordonnances ou conclusions et réexamen

76. (1) Sous réserve des autres dispositions du présent article, du paragraphe 61(3), de l'alinéa 91(1)(g), de l'article 96.1 et de la partie II, les ordonnances ou conclusions du Tribunal prévues à la présente loi sont définitives.

(2) Le Tribunal peut, de sa propre initiative ou à la demande du sous-ministre, de toute autre personne ou d'un gouvernement, réexaminer une ordonnance ou des conclusions rendues en vertu des articles 3 à 6 et à cette fin, accorder une nouvelle audition sur toute question.

(2.1) Après réception de l'avis visé aux paragraphes 41.1(1) ou (2) et relatif à des marchandises faisant l'objet d'une ordonnance ou de conclusions du Tribunal non visées aux articles 3 à 6, celui-ci peut, de sa propre initiative ou à la demande du sous-ministre, de toute autre personne ou d'un gouvernement, réexaminer celles-ci et, à cette fin, accorder une nouvelle audition sur toute question.

(2.2) Le Tribunal est tenu, après le renvoi à lui d'une ordonnance ou de conclusions par suite d'une ordonnance rendue au titre des paragraphes 77.15(3) ou (4), de procéder à leur réexamen et peut, à cette fin, accorder une telle audition.

(3) Le Tribunal ne fait droit à une demande de réexamen aux termes des paragraphes (2) ou (2.1) que si le demandeur le convainc du bien-fondé de celle-ci.

Condition préalable

(3.1) Le Tribunal, s'il rejette la demande de réexamen visée au paragraphe (2), rend en ce sens une ordonnance motivée, dont le secrétaire transmet copie, par courrier recommandé, aux demandeurs et fait publier un avis dans la Gazette du Canada.

Refus de réexamen

(4) À la fin du réexamen visé au paragraphe (2), le Tribunal rend une ordonnance motivée annulant ou prorogeant l'ordonnance ou les conclusions avec ou sans modification, selon le cas.

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

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

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

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

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

(ii) not later than 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.

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

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

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

the order or finding shall be deemed to have been rescinded as of the expiration of the five years.
Partie II  Mesures spéciales d'importation

R.S., 1985, c. S-15, s. 76; R.S., 1985, c. 47 (4th Supp.), s. 52; 1988, c. 65, s. 41.

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

PART II  DISPUTE SETTLEMENT RESPECTING GOODS OF THE UNITED STATES

Interpretation

77.1 (1) In this Part,

“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”, in relation to a definitive decision, means either the Deputy Minister or the Tribunal, according to which made the decision;

“committee” means an extraordinary challenge committee appointed pursuant to section 77.18;

“definitive decision” means

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

Définitions

77.1 (1) Les définitions qui suivent s'appliquent à la présente partie.

«autorité compétente» Le sous-ministre ou le Tribunal qui a rendu une décision définitive.

«comité» Le comité pour contestation extraordinaire formé au titre de l'article 77.18.

«décisions finales» Les décisions suivantes relatives à des marchandises des États-Unis, à l'exclusion des décisions visant à donner effet à celles de la Cour fédérale ou de la Cour suprême du Canada relatives à ces marchandises :

a) la décision définitive rendue par le sous-ministre au titre de l’alinéa 41(1)a);

b) la décision rendue par le sous-ministre au titre de l’alinéa 41(1)b) de faire clore une enquête;

c) les ordonnances ou conclusions rendues par le Tribunal au titre du paragraphe 43(1);

d) la décision du sous-ministre de renouveler ou non un engagement rendue au titre du paragraphe 53(1);

e) le réexamen fait par le sous-ministre au titre du paragraphe 59(1);

f) le réexamen fait par le sous-ministre au titre du paragraphe 59(3);

g) l'ordonnance rendue par le Tribunal au titre du paragraphe 76(3.1);

h) l'ordonnance de prorogation rendue par le Tribunal au titre du paragraphe 76(4);

i) l'ordonnance ou les conclusions rendues par le Tribunal au titre du paragraphe 76(4.1) et relatives au réexamen prévu au paragraphe 76(2.1);

j) les ordonnances ou conclusions rendues par le Tribunal au titre du paragraphe 91(3).
include any such determination, re-determination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Canada or the Supreme Court of Canada relating to those goods;

"Minister" means the Minister for International Trade;

"panel" means a panel appointed pursuant to section 77.13;

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

"Secretariat" means the Canadian Secretariat established by section 77.23.

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

Request for Review

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.

(2) On a request made to the Canadian Secretary by any person who, but for section 77.12, would be entitled to apply under section 28 of the Federal Court Act, or section 96.1 of this Act or to appeal under section 61 of this Act, 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.

(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 Deputy Minister under subsection 59(1) or (3), the day on which notice of the re-determination is received by the United States government.

(4) A request by the Minister for the review of a definitive decision may be made only on a ground set forth in subsection 28(1) of the Federal Court Act.
Partie II

Mesures spéciales d’importation

(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.

(6) Where a request is made by the Minister or the United States government for the review of a definitive decision by a panel, no person or government may apply under section 18 or 28 of the Federal Court Act or section 96.1 of this Act or appeal under section 61 of this Act in respect of the decision.

77.12 (1) No person or government may apply under section 18 or 28 of the Federal Court Act or section 96.1 of this Act or appeal under section 61 of this Act in respect of a definitive decision

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

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

(2) For the purpose of permitting a government or person to apply under section 28 of the Federal Court Act or section 96.1 of this Act in respect of a definitive decision after the expiration of the limitation period established by paragraph 4 of Article 1904 of the Free Trade Agreement for requesting a review of the decision, the ten day limitation period referred to in subsection 28(2) of the Federal Court Act and subsection 96.1(3) of this Act is extended by 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.

77.12 (2) Afin de permettre la demande visée au paragraphe (1) après expiration du délai qui y est prévu, celui de dix jours prévu aux paragraphes 28(2) de la Loi sur la Cour fédérale et 96.1(3) de la présente loi est prorogé de trente jours et calculé à compter du premier jour de ce délai.

1988, ch. 65, art. 42.
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Special Import Measures

Establishment of Panels

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.

77.13 (1) Un groupe est formé, en conformité avec les paragraphes 1 à 4 de l'annexe 1901.2 du chapitre 19 de l'Accord de libre-échange et les règlements pris à cet égard, afin de réviser la décision finale objet d'une demande faite en application de l'article 77.11.

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.

77.14 Une fois les membres choisis, l'autorité compétente fait transmettre au secrétaire, conformément aux règles, copie du dossier administratif.

Review by Panel

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.

77.15 (1) Le groupe spécial procède à la révision de la décision finale conformément au chapitre 19 de l'Accord de libre-échange et aux règles.

Powers of panel

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

(2) Le groupe spécial a les pouvoirs, droits et privilèges qui lui sont conférés par règlement.

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.

(3) Au terme de la révision, le groupe spécial décide du bien-fondé du motif invoqué à l'entour de la décision finale visée et rend une ordonnance définitive qui confirme la décision ou renvoie l'affaire à l'autorité compétente pour réexamen dans le délai qu'il fixe.

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.

(4) Le groupe spécial révise, de sa propre initiative ou sur demande faite conformément aux règles, la suite donnée par l'autorité compétente à l'ordonnance ainsi rendue et rend une nouvelle ordonnance dans les quatre-vingt-dix jours suivant la date de réception de l'avis de cette suite par le secrétaire canadien.
Partie II

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

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.

(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

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.

(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.

(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, ch. 65, art. 42.
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Special Import Measures

Part II

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.

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

Powers of committee

(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.

New 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.

Action by panel

(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.

Decision

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.

(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

No review

77.2 (1) Sous réserve du paragraphe 77.15(4) et de l'article 77.17, les ordonnances et décisions du groupe spécial ou du comité sont obligatoires et définitives et ne sont pas susceptibles d'appel.

(2) Sous réserve du paragraphe 77.15(4) et de l'article 77.17, l'action — décision, ordonnance ou procédure — du groupe spécial ou du comité, dans la mesure où elle s'exerce ou est censée s'exercer dans le cadre de la présente loi, ne peut, pour quelque motif que ce soit — y compris l'excès de pouvoir ou l'incompétence à
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(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.

(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.

(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.

77.22 Every member of a panel shall be paid such remuneration and is entitled to such travel and living expenses incurred in the performance of the member’s duties under this Part as are fixed by the Canada-United States Trade Commission established pursuant to the Free Trade Agreement.

Secretariat

77.23 There is hereby established a secretariat, to be called the Canadian...
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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.

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.

77.24 (1) Le secrétaire en conseil, sur recommandation du ministre, nomme, pour un mandat maximal de cinq ans, le secrétaire du Secrétariat.

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.

(2) Le secrétaire canadien reçoit la rémunération et l'indemnisation fixées par le gouverneur en conseil.

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.

(3) En cas d'absence ou d'empêchement du secrétaire canadien ou de vacance de son poste, le gouverneur en conseil peut nommer un remplaçant, aux conditions qu'il estime indiquées. Celui-ci exerce dès lors les pouvoirs et fonctions de ce secrétaire et reçoit la rémunération et l'indemnisation fixées par le gouverneur en conseil.

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.

(4) Les dispositions de la Loi sur la pension de la fonction publique qui ne traitent pas d'occupation de poste s'appliquent au secrétaire canadien; toutefois, s'il est choisi en dehors de la fonction publique, au sens de la même loi, il peut, par avis écrit adressé au président du Conseil du Trésor dans les soixante jours suivant sa date de nomination, choisir de cotiser au régime de pension prévu par la Loi sur la pension spéciale du service diplomatique; dans ce cas, il est assujetti aux dispositions de cette loi qui ne traitent pas d'occupation de poste.

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.

(5) Le secrétaire canadien est le premier dirigeant du Secrétariat; à ce titre, il contrôle son travail et la gestion de son personnel.

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.

77.25 Le personnel nécessaire à l'exercice des travaux du Secrétariat est nommé conformément à la Loi sur l'emploi dans la fonction publique.
Partie II

Mesures spéciales d’importation

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.

Infractions

77.26 (1) Commet une infraction quiconque contrevient ou manque soit aux engagements visés au paragraphe 77.21(2), soit aux règles concernant la communication et l’utilisation de renseigne­ments protégés — confidentiels, personnels, commerciaux de nature exclusive ou autres —, soit aux ordonnances conservatoires rendues à l’égard de ces renseignements en application de la législation américaine de mise en œuvre de l’Accord de libre-échange.

Peine

(2) Quiconque commet l’infraction prévue au paragraphe (1) encourt, sur déclaration de culpabilité :
(a) par mise en accusation, une amende maximale d’un million de dollars; 
b) par procédure sommaire, une amende maximale de cent mille dollars.

Consentement préalable

(3) Il ne peut être engagé de poursuite pour une telle infraction sans le consentement écrit du procureur général du Canada.

1988, ch. 65, art. 42.

Règlements

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.
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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

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 Deputy Minister

78. (1) Where.
(a) in any investigation under this Act respecting the dumping or subsidizing of goods, or
(b) in relation to the sale of
(i) any goods to an importer in Canada, or
(ii) any goods located or in the course of production out of Canada,
that are of the same description as goods to which an order or finding of the Tribunal described in section 3, 5 or 6 applies and that will or may be imported into Canada,
the Deputy Minister believes on reasonable grounds that any person in Canada is able to provide evidence relevant to the investigation or to the making, for the purpose of facilitating the administration or enforcement of this Act, of an estimate of the duty that will or may be payable on the goods when imported into Canada, the Deputy Minister may, by notice in writing, require the person to provide the

PARTIE III

DISPOSITIONS GÉNÉRALES

Production de preuves

78. (1) Dans les cas où :
a) dans le cadre d’une enquête de dumping ou de subventionnement;
b) à l’égard d’une vente :
(i) soit de marchandises à un importateur se trouvant au Canada,
(ii) soit de marchandises qui se trouvent à l’étranger ou qui y sont en cours de production,
qui sont de même description que celles aux quelles s’applique une ordonnance ou des conclusions du Tribunal visées aux articles 3, 5 ou 6 et qui seront ou pourraient être importées au Canada,
il a des motifs raisonnables de croire qu’une personne se trouvant au Canada est en mesure de fournir des éléments de preuve utiles à l’enquête ou, pour faciliter l’application de la présente loi, à l’estimation des droits payables ou éventuellement payables sur les marchandises, le sous-ministre peut, par avis écrit, exiger
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Deputy Minister, under oath or otherwise, with the evidence referred to in the notice.

(2) Where, by notice given pursuant to subsection (1), the Deputy Minister requires any person to provide evidence, he shall
(a) include in the notice sufficient information for the person to identify the evidence;
(b) specify in the notice the time within which and the manner and form in which the evidence is to be provided; and
(c) include with the notice a copy or summary of this section and sections 82 to 85.

(3) Where a person is required by notice given pursuant to subsection (1) to provide the Deputy Minister with evidence, the person shall
(a) if it is reasonably practicable for the person to do so, provide the evidence in accordance with the notice;
(b) if it is reasonably practicable for the person to provide a part only of the evidence in accordance with the notice,
(i) so provide that part of the evidence, and
(ii) provide the Deputy Minister with a written statement under oath identifying the remainder of the evidence and specifying the reason why it is not reasonably practicable for the person to provide the remainder of the evidence in accordance with the notice; and
(c) if it is not reasonably practicable for the person to provide the evidence in accordance with the notice, provide the Deputy Minister with a statement under oath so stating and specifying the reason why it is not reasonably practicable to so provide the evidence.

(4) Nothing in this section shall be construed as authorizing the Deputy Minister to require any person to provide evidence orally.

(5) Where, pursuant to paragraph (2)(b), the Deputy Minister specifies the time within which evidence is to be provided, the Deputy Minister may, either before or after the expiration of that time, extend the time within which the evidence is to be provided. 1984, c. 25, s. 78.

79. (1) Where a person who provides the Deputy Minister with evidence pursuant to subsection 78(3) wishes some or all of the evidence to be kept confidential, the person shall submit d’elle qu’elle fournisse les éléments précisés à l’avis sous la foi du serment ou autrement.

(2) L’avis mentionné au paragraphe (1) : Avis
a) contient des renseignements suffisants pour que son destinataire puisse reconnaître les éléments de preuve dont il s’agit;
b) mentionne le délai dans lequel les éléments de preuve doivent être transmis ainsi que la façon de le faire et la forme qu’ils doivent prendre;
c) est accompagné du texte ou d’un résumé du présent article et des articles 82 à 85.

(3) La personne qui reçoit l’avis mentionné au paragraphe (1) doit :
(a) s’il lui est possible de le faire sans problèmes sérieux, transmettre les éléments de preuve demandés;
b) si, sans problèmes sérieux, il ne lui est possible de transmettre qu’une partie des renseignements :
(i) transmettre la partie en cause,
(ii) fournir en outre au sous-ministre une déclaration écrite sous serment précisant les éléments de preuve manquants et les problèmes que lui causerait leur transmission;
c) s’il ne lui est pas possible sans problèmes sérieux de transmettre les éléments de preuve demandés, fournir une déclaration sous serment à cet effet, motifs à l’appui.

(4) Le présent article n’a pas pour effet d’autoriser le sous-ministre à exiger d’une personne qu’elle dépose oralement.

(5) Le sous-ministre peut proroger le délai visé à l’alinéa (2)b) avant ou après son expiration. 1984. ch. 25, art. 78.

79. (1) La personne qui fournit des éléments de preuve aux termes du paragraphe 78(3) et qui désire qu’ils soient gardés confidentiels en tout ou en partie fournit, en même temps que
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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.

(2) Where, pursuant to subsection (1), a person submits to the Deputy Minister a statement designating evidence as confidential, together with the explanation referred to in that subsection, the person shall submit to the Deputy Minister, at the same time, a summary of the evidence designated as confidential in sufficient detail to convey a reasonable understanding of the evidence. 1984, c. 25, s. 79.

**Collection of Duty**

80. [Repealed, R.S., 1985, c. 1 (2nd Supp.), s. 209]

81. (1) Notwithstanding anything in this Act, where any duty payable under this Act in respect of goods has not been paid within thirty days after a demand for payment of the duty has been made pursuant to this Act, the Minister may, by notice in writing, require any person in Canada to whom the goods are sold to pay a sum in respect of the duty not exceeding the amount of the duty payable in respect of the goods sold to that person, which sum is, after the notice has been given, a debt due and payable to Her Majesty by that person and may be recovered at any time by action in any court of competent jurisdiction, together with costs of the action.

(2) Where an amount that is less than the duty payable in respect of goods imported into Canada is recovered from a person pursuant to subsection (1), such recovery is without prejudice to any recourse available to Her Majesty under the Customs Act with respect to the remainder of the duty payable.


**Disclosure of Information**

82. In sections 83 to 87, “information” includes evidence. 1984, c. 25, s. 82.

83. Whereinformation is provided to the Deputy Minister for the purposes of any proceedings under this Act, every party to the proceedings has, unless the information is infor-

**Recouvrement des droits**

80. [Abrogé, L.R. (1985), ch. 1 (2e suppl.), art. 209]

81. (1) Par dérogation aux autres dispositions de la présente loi, s’il n’a pas été satisfait, dans les trente jours suivant celle-ci, à une demande de paiement des droits payables sur des marchandises en vertu de la présente loi, le ministre peut, par avis écrit, exiger de toute personne se trouvant au Canada à qui les marchandises ont été vendues, l’acquittement de ces droits, jusqu’à concurrence de ceux payables sur les marchandises ainsi vendues. Ces droits sont dès lors des créances de Sa Majesté contre le destinataire de l’avis et leur recouvrement, de même que les frais de justice afférents, peut être poursuivi devant tout tribunal compétent.

(2) Le recouvrement effectué en vertu du paragraphe (1) est, pour tout solde éventuel, sans préjudice des recours que prévoit la Loi sur les douanes.


**Communication de renseignements**

82. Pour l’application des articles 83 à 87, sont compris parmi les renseignements les éléments de preuve. 1984, ch. 25, art. 82.

83. Toute partie à une procédure prévue par la présente loi a droit, sur demande, de consulter les renseignements auxquels ne s’applique pas le paragraphe 84(1) et fournis au sous-
Information not to be disclosed

84. (1) Where a person (a) designates information as confidential pursuant to paragraph 85(1)(a), or (b) submits to the Deputy Minister, with respect to evidence, in this section referred to as "information", provided by him pursuant to subsection 78(3), the statement and explanation referred to in subsection 79(1), and that designation or submission, as the case may be, is not withdrawn by the person, no person employed in the public service of Canada who comes into possession of that information while he is so employed shall, either before or after he ceases to be so employed, knowingly disclose that information, or knowingly allow it to be disclosed, to any other person in any manner that is calculated or likely to make it available for the use of any business competitor or rival of any person to whose business or affairs the information relates.

(2) Subsection (1) does not apply in respect of any summary of information or statement referred to in paragraph 85(1)(b) or any summary referred to in subsection 79(2).

(3) Notwithstanding subsection (1), information to which that subsection applies that has been provided to the Deputy Minister in any proceedings under this Act may be disclosed by the Deputy Minister to counsel for any party to those proceedings or to other proceedings under this Act arising out of those proceedings for use by that counsel only in those proceedings or other proceedings, subject to such conditions as the Deputy Minister considers are reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who submitted it to the Deputy Minister, be disclosed to any person by counsel in any manner that is calculated or likely to make it available to (a) any party to the proceedings or other proceedings, including a party who is represented by that counsel; or (b) any other person.

Disclosure of summary or statement

Disclosure to counsel

(2) Le paragraphe (1) ne s'applique pas aux résumés ou déclarations visés à l'alinéa 85(1)b) ni aux résumés visés au paragraphe 79(2).

(3) Nonobstant le paragraphe (1), les renseignements auxquels ce paragraphe s'applique peuvent être communiqués par le sous-ministre à l'avocat d'une partie à la procédure pour laquelle ils ont été fournis ou à toute procédure prévue à la présente loi qui en découle: l'avocat ne peut les utiliser que dans le cadre de ces procédures, sous réserve des conditions que le sous-ministre juge indiquées pour empêcher que les renseignements ne soient divulgés, sans le consentement de la personne qui les a fournis, de manière à pouvoir être utilisés par:

a) toute partie à ces procédures, y compris celles qui sont représentées par avocat;

b) tout concurrent de la personne à l'entreprise ou aux activités de laquelle ils se rapportent.
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(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.

85. (1) Where a person who provides information to the Deputy Minister for the purposes of proceedings under this Act wishes some or all of the information to be kept confidential, the person shall submit, at the time the information is provided,

(a) a statement designating as confidential the information that he wishes to be kept confidential, together with an explanation of why he designated that information as confidential; and

(b) a 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 summary cannot be made, or

(ii) that such a 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.

85. (1) La personne qui fournit des renseignements au sous-ministre dans le cadre d’une procédure prévue par la présente loi et qui désire qu’ils soient gardés confidentiel en tout ou en partie fournit, en même temps que les renseignements:

a) d’une part, une déclaration désignant comme tels les renseignements qu’elle veut garder confidentiels avec explication à l’appui;

b) d’autre part, soit un résumé des renseignements désignés comme confidentiels en termes suffisamment précis pour permettre de les comprendre, soit une déclaration, accompagnée d’une explication destinée à la justifier, énonçant, selon le cas :

(i) qu’il est impossible de faire ce résumé, 

(ii) qu’un résumé communiquerait des faits qu’elle désire valablement garder confidentiels.

(2) A person who designates information as confidential pursuant to paragraph (1)(a) fails to comply with paragraph (1)(b) where

(a) the person provides neither the summary nor a statement referred to in paragraph (1)(b);

(b) the person provides a summary of the information designated as confidential pursuant to paragraph (1)(a), but the Deputy Minister is satisfied that the summary does not comply with paragraph (1)(b);

(c) the person provides a statement referred to in paragraph (1)(b), but does not provide an explanation that justifies the making of the statement; or

(d) the person provides a statement referred to in paragraph (1)(b), but the Deputy Minister is satisfied that the explanation given as

(2) Les cas où une personne qui désigne des renseignements comme confidentiels aux termes de l’alinéa (1)a) ne se conforme pas à l’alinéa (1)b) sont les suivants :

a) elle ne fournit ni le résumé ni la déclaration prévus à l’alinéa (1)b);

b) le résumé qu’elle fournit n’est pas, de l’avis du sous-ministre, conforme aux exigences de cet alinéa;

c) elle fournit une déclaration mais ne donne pas les explications qui la justifieraient;

d) elle fournit une déclaration mais les explications données pour sa justification ne convainquent pas le sous-ministre de son bien-fondé. 1984, ch. 25, art. 85.
justification for the making of the statement does not justify the making thereof. 1984, c. 25, s. 85.

86. (1) Where a person has designated information as confidential pursuant to paragraph 85(1)(a) and the Deputy Minister considers that the designation is warranted, but the person has failed to comply with paragraph 85(1)(b), the Deputy Minister shall cause the person to be informed of that failure, of the ground on which he has so failed and of the application of subsection 87(3) if the person fails to take, within the time limited therefor by or pursuant to that subsection, such action as it is necessary for him to take in order to comply with paragraph 85(1)(b).

86. (1) Dans les cas où le sous-ministre considère comme légitime la désignation faite en vertu de l’alinéa 85(1)a) mais que la personne qui l’a faite ne se conforme pas à l’alinéa 85(1)b), le sous-ministre la fait informer de ce défaut, de ce qui l’a causé ainsi que de l’application du paragraphe 87(3) advenant son défaut de prendre, dans le délai prévu à ce paragraphe, les mesures qui s’imposent pour l’observation de l’alinéa 85(1)b).

Where there has been failure to comply

(2) Where, pursuant to paragraph 85(1)(a), a person has designated information as confidential and the Deputy Minister considers that, because of its nature, extent, availability from other sources or the failure of the person to provide any explanation of why he designated it as confidential, the designation of that information as confidential is unwarranted, the Deputy Minister shall cause the person

(2) Dans les cas où il ne considère pas comme légitime la désignation faite en vertu de l’alinéa 85(1)a), vu la nature ou l’abondance des renseignements ainsi désignés, leur accessibilité d’autres sources ou le défaut de fournir une explication de la désignation, le sous-ministre :

(a) fait donner avis à cet effet à la personne qui les a fournis en précisant les motifs de sa décision;
(b) dans le cas de non-conformité à l’alinéa 85(1)b), fait informer cette personne conformément au paragraphe (1). 1984, ch. 25, art. 86.

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,

87. (1) La personne qui a été avisée conformément à l’alinéa 86(2)a) peut, dans les quinze jours suivant l’avis :

(a) withdraw the designation, or
(b) submit to the Deputy Minister an explanation or further explanation of why he designated the information as confidential, and where the person does neither of those things within the fifteen days, that information shall not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, unless the Deputy Minister obtains it elsewhere than from that person.

Withdrawal of designation or submission of explanation

87. (1) La personne qui a été avisée conformément à l’alinéa 86(2)a) peut, dans les quinze jours suivant l’avis :

(a) soit renoncer à la désignation;
(b) soit fournir au sous-ministre des explications ou des explications plus poussées sur les raisons de la désignation.

Si elle fait défaut d’agir dans le délai, le sous-ministre ne peut tenir compte des renseignements désignés comme confidentiels dans le cadre de la procédure pour laquelle ils ont été fournis ou de toute procédure en découlant, sauf s’il les obtient d’une autre source.
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 Deputy Minister, either before or after the expiration of the fifteen days, in his discretion allows, take such action as is necessary for the person to take in order to comply with paragraph 85(1)(b), the Deputy Minister shall cause the information to be notified that the information will not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, in which case the information shall not thereafter be taken into account by the Deputy Minister in any such proceedings, unless he obtains it elsewhere than from that person.

Exception

(4) Subsection (3) does not apply in respect of any information that the Deputy Minister is prohibited by subsection (1) or (2) from taking into account in the proceedings for the purposes of which it was provided. 1984, c. 25, s. 87.

Application of sections 86 and 87

88. Sections 86 and 87 do not apply in respect of evidence submitted to the Deputy Minister pursuant to subsection 78(3). 1984, c. 25, s. 88.

(2) Where, pursuant to subsection (1), a person submits to the Deputy Minister, within the fifteen days referred to in that subsection, an explanation or further explanation of why the person designated information as confidential, the Deputy Minister shall again consider whether, taking into account that explanation or further explanation, the designation of the information as confidential is warranted and, if the Deputy Minister decides that it is not warranted, shall cause the person to be notified that the information will not thereafter be taken into account by the Deputy Minister in the proceedings for the purposes of which it was provided or in any proceedings arising out of those proceedings, in which case the information shall not thereafter be taken into account by the Deputy Minister in any such proceedings, unless he obtains it elsewhere than from that person.

(2) Dans les cas où, conformément au paragraphe (1), une personne fournit au sous-ministre, dans les quinze jours visés à ce paragraphe, une explication ou une explication plus poussée des raisons pour lesquelles elle a désigné des renseignements comme confidentiels, celui-ci examine de nouveau la question et, s'il décide que la désignation n'est pas légitime, il fait aviser cette personne qu'il ne sera pas tenu compte des renseignements dans le cadre de la procédure pour laquelle ils ont été fournis ou de toute procédure en découlant; le sous-ministre ne peut dès lors tenir compte des renseignements que s'ils les obtient d'une autre source.

Exception (4) Subsection (3) does not apply in respect of any information that the Deputy Minister is prohibited by subsection (1) or (2) from taking into account in the proceedings for the purposes of which it was provided. 1984, c. 25, s. 87.

Le paragraphe (3) ne s'applique pas aux renseignements dont le sous-ministre ne peut tenir compte aux termes du paragraphe (1) ou (2). 1984, ch. 25, art. 87.

Application des art. 86 et 87

88. Les articles 86 et 87 ne s'appliquent pas aux éléments de preuve fournis au sous-ministre aux termes du paragraphe 78(3). 1984, ch. 25, art. 88.
89. (1) Where a question arises or is raised as to which of two or more persons is, for the purposes of this Act, the importer in Canada of goods imported or to be imported into Canada on which duty is payable or has been paid or will be payable if the goods are imported, the Deputy Minister may, and at the request of any person interested in the importation of the goods shall, request the Tribunal for a ruling on that question, unless, in the case only of goods that have been imported into Canada,

(a) a determination has been made pursuant to section 55 or subsection 56(1) with respect to the goods; and

(b) more than ninety days have elapsed since the determination referred to in paragraph (a) was made.

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

(a) state in the request which of the two or more persons the Deputy Minister believes is the importer in Canada of the goods;

(b) if any of the goods is of the same description as the goods specified in a preliminary determination made in an investigation that was initiated pursuant to section 31 and is still continuing, so state in the request;

(c) provide the Tribunal with such information as the Deputy Minister considers will be useful to it in considering the 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.

(3) Where, in any investigation, the Deputy Minister makes a final determination of dumping or subsidizing under subsection 41(1) in respect of any goods, the investigation shall, for the purpose of paragraph (2)(b), be deemed to continue until such time as the Tribunal makes an order or finding in respect of the goods. 1984, c. 25, s. 89.

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.

91. (1) Where
(a) a request is made to the Tribunal pursuant to subsection 89(1) for a ruling on the question referred to therein,
(b) a statement pursuant to paragraph 89(2)(b) is made in the request, and
(c) the Tribunal's ruling on the question is that the importer in Canada of the goods is a person other than the person specified as such by the Deputy Minister pursuant to paragraph 89(2)(a),
the following rules apply:
(d) as soon as possible after the Tribunal gives its ruling on the question, the Deputy Minister shall
(i) reconsider any final determination of dumping or subsidizing made pursuant to subsection 41(1) with respect to the goods specified in the preliminary determination and shall confirm the final determination, rescind it or make amendments to it, as is appropriate in the circumstances, and
(ii) cause notice of the action taken by the Deputy Minister pursuant to subparagraph (i) to be given to prescribed persons and governments, published in the Canada Gazette and filed with the Secretary in writing;
(e) where the Deputy Minister rescinds a final determination pursuant to paragraph (d), section 41 shall again apply in respect of

91. (1) Dans les cas où :
(a) le Tribunal est saisi de la demande sur la question visée au paragraphe 89(1);
(b) la demande contient la mention visée à l’alinéa 89(2)b);
c) la personne que le Tribunal considère comme l’importateur n’est pas celle que le sous-ministre avait désignée aux termes de l’alinéa 89(2)a),
les règles suivantes s’appliquent :
(d) aussitôt que possible après la décision du Tribunal, le sous-ministre :
(i) réexamine toute décision définitive de dumping ou de subventionnement rendue aux termes du paragraphe 41(1) quant aux marchandises précisées dans la décision provisoire et la confirme, l’annule ou la modifie selon ce qui est indiqué dans les circonstances,
(ii) fait donner avis des mesures prises en vertu du sous-alinéa (i) aux personnes et gouvernements visés par règlement, fait publier l’avis dans la Gazette du Canada et fait déposer l’avis auprès du secrétaire;
(e) si le sous-ministre annule la décision définitive aux termes de l’alinéa d), l’article 41 s’applique de nouveau aux marchandises objet de la décision définitive comme s’il ne s’était jamais appliqué sauf que le sous-ministre doit prendre les mesures qui y sont
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the goods to which the final determination applied as if that section had not previously applied in respect of those goods, except that the action that the Deputy Minister is required by that section to take shall, notwithstanding anything therein, be taken by the Deputy Minister within sixty days after the Tribunal gives its ruling on the question;

(f) where the Deputy Minister has caused the investigation referred to in paragraph 89(2)(b) to be terminated pursuant to subsection 41(1) with respect to the goods specified in the preliminary determination, the Tribunal shall be deemed to have directed the Deputy Minister, by notice in writing pursuant to section 46, to cause an investigation to be initiated respecting the dumping or subsidizing of those goods and the Deputy Minister shall, pursuant to subsection 31(2), forthwith cause such an investigation to be commenced; and

(g) the Tribunal may, on its own initiative or at the request of the Deputy Minister or any person interested but subject to subsection (2), reconsider, under the authority of this paragraph, any order or finding made by it in the inquiry referred to in paragraph 90(c) and, in so reconsidering, may re-hear any matter before deciding it.

(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.

(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 Deputy Minister, the importer, the exporter and such other persons and governments as may be specified by the rules of the Tribunal

(i) forthwith after the reconsideration is completed, notice of the action taken pursuant to paragraph (a) with respect to the order or finding and, where another order or finding has been made pursuant to that paragraph, a copy of that other order or finding, and

(ii) not later than 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*.

(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.

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

ou aux gouvernements que prévoient les règles du Tribunal les documents suivants :

(i) dès la fin du réexamen, avis des mesures prises aux termes de l’alinéa a) et, le cas échéant, copie de la nouvelle ordonnance ou des nouvelles conclusions.

(ii) dans les quinze jours suivant la fin du réexamen, l’exposé des motifs correspondants;

c) le secrétaire fait publier un avis de la nouvelle ordonnance ou des nouvelles conclusions dans la *Gazette du Canada*.

(4) Lorsque le réexamen prévu à l’alinéa (1)g) concerne diverses marchandises dont certaines proviennent des États-Unis, le Tribunal rend, au titre de l’alinéa (3)a), le cas échéant, de nouvelles ordonnances ou conclusions distinctes à l’égard de celles-ci.


92. La détermination faite en vertu de l’article 55 pour des marchandises importées et concernant une personne qui, selon la décision du Tribunal, n’est pas l’importateur des marchandises est réputée ne pas avoir été faite et, pour l’application de l’article 55, la date de l’ordonnance ou des conclusions du Tribunal quant à des marchandises qui semblent être de même description que les marchandises importées est réputée être, selon le cas :

a) si le Tribunal confirme l’ordonnance ou les conclusions qui ont fait l’objet du réexamen prévu à l’alinéa 91(1)g), la date de la confirmation:

b) si le Tribunal annule l’ordonnance ou les conclusions qui ont fait l’objet du réexamen prévu à l’alinéa 91(1)g) et rend une nouvelle ordonnance ou de nouvelles conclusions pour des marchandises répondant à cette descrip-
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to goods of that description, the date of the
other order or finding; and
(c) in any other case, the date of the Tribu-
nal’s ruling. 1984, c. 25, s. 92.

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.

94. A ruling given by the Tribunal on the
question of who is the importer in Canada of
any goods imported or to be imported into
Canada is binding on the Deputy Minister, and
on every person employed by the Department
of National Revenue in the administration or
enforcement of this Act, with respect to the
particular goods in relation to which the ruling
is given, unless the Tribunal is fraudulently
misled or, in the case only of goods to be
imported into Canada, material facts that are
not available to the Deputy Minister at the
time the Tribunal gives its ruling come to the
Deputy Minister’s attention after it is given.
1984, c. 25, s. 94.

95. Where any person interested in the
importation of goods into Canada requests the
Deputy Minister to provide the person with the
name of the importer of the goods, the Deputy
Minister shall, except in prescribed circum-
stances, forthwith provide the person with the
name of the importer. 1984, c. 25, s. 95.

Gathering of Information

96. In order to facilitate the administration
and enforcement of this Act, where the Deputy
Minister believes that goods sold to an importer
in Canada or goods located or in the course of
production out of Canada are or may be of the
same description as goods to which an order or
finding of the Tribunal described in section 3, 5

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pursuant to
section 56, 57
or 59

Ruling binding

Caractère
obligatoire de la
décision

Communication
du nom de
l'importateur

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or 6 applies and that they will or may be imported into Canada, the Deputy Minister may, for the purpose of estimating the margin of dumping of or the amount of the 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. 1984, c. 25, s. 96.

**Application for Review**

96.1 (1) An application may be made to the Federal Court of Appeal to review and set aside
(a) a final determination of the Deputy Minister under paragraph 41(1)(a);
(b) a decision of the Deputy Minister under paragraph 41(1)(b) to cause an investigation to be terminated;
(c) a decision of the Deputy Minister under subsection 53(1) to renew or not to renew an undertaking;
(d) an order of the Tribunal under subsection 76(3.1);
(e) an order of the Tribunal under subsection 76(4);
(f) an order or finding of the Tribunal under subsection 76(4.1) respecting a review pursuant to subsection 76(2.1); or
(g) an order or finding of the Tribunal under subsection 91(3).

(2) An application may be made under this section on the ground that the Deputy Minister or the Tribunal, as the case may be,
(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise the jurisdiction of the Deputy Minister or the Tribunal;
(b) erred in law in making the determination, decision, order or finding, whether or not the error appears on the face of the record; or
(c) based the determination, decision, order or finding on an erroneous finding of fact that was made in a perverse or capricious manner or without regard to the material before the Deputy Minister or the Tribunal.

**Demande de révision judiciaire**

96.1 (1) Une demande de révision et d’annulation peut être présentée à la Cour d’appel fédérale relativement aux décisions, ordonnances ou conclusions suivantes :
(a) la décision définitive rendue par le sous-ministre au titre de l’alinéa 41(1)a);
(b) la décision rendue par le sous-ministre au titre de l’alinéa 41(1)b de faire clore une enquête;
(c) la décision du sous-ministre de renouveler ou non un engagement rendue au titre du paragraphe 53(1);
(d) l’ordonnance rendue par le Tribunal au titre du paragraphe 76(3.1);
(e) l’ordonnance de prorogation rendue par le Tribunal au titre du paragraphe 76(4);
(f) l’ordonnance ou les conclusions rendues par le Tribunal au titre du paragraphe 76(4.1) et relatives au réexamen prévu au paragraphe 76(2.1); ou
(g) les ordonnances ou conclusions rendues par le Tribunal au titre du paragraphe 91(3).

(2) La demande peut être présentée pour l’un ou l’autre des motifs suivants :
(a) le sous-ministre ou le Tribunal a soit omis d’observer un principe de justice naturelle, soit autrement outrepassé sa compétence ou refusé de l’exercer;
(b) il a rendu une décision, une ordonnance ou des conclusions entachées d’une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
(c) il a fondé sa décision, son ordonnance ou ses conclusions sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments à sa disposition.
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Filing of application

(3) 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 ten days after the time the determination, decision, order or finding was first communicated to that person by the Deputy Minister or the Tribunal, or within such further time as the Federal Court of Appeal or a judge thereof may, before or after the expiration of those ten 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.

Disposition

(6) On an application under this section, the Federal Court of Appeal may dismiss the application, set aside the final determination, decision, order or finding, or set aside the final determination, decision, order or finding and refer the matter back to the Deputy Minister or the Tribunal, as the case may be, for determination in accordance with such directions as it considers appropriate.

96.2 Subsection 28(4) of the Federal Court Act does not apply to the Deputy Minister or the Tribunal in respect of proceedings under this Act relating to goods of the United States.

1988, c. 65, s. 44.

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.

(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

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(3) Toute personne directement intéressée par la décision, l'ordonnance ou les conclusions peut présenter la demande en déposant à la Cour d'appel fédérale un avis en ce sens soit dans les dix jours qui suivent la première communication, par le sous-ministre ou le Tribunal de la décision, de l'ordonnance ou des conclusions à cette personne, soit dans le délai supplémentaire que cette Cour ou un de ses juges peut, même après l'expiration de ces dix jours, fixer ou accorder.

Incompétence de la Division de première instance

(4) La Division de première instance ne peut connaître des demandes de révision ou d'annulation de décisions, d'ordonnances ou de conclusions qui, aux termes du présent article, ressortissent à la Cour d'appel.

Procédure sommaire d'audition

(5) La cour statue à bref délai et selon une procédure sommaire sur les demandes faites en application du présent article.

Décision de la Cour

(6) La cour peut soit rejeter la demande, soit annuler la décision, l'ordonnance ou les conclusions avec ou sans renvoi de l'affaire au sous-ministre ou au Tribunal, selon le cas, pour qu'il y donne suite selon les instructions qu'elle juge indiquées.

1988, ch. 65, art. 44.

96.2 Le paragraphe 28(4) de la Loi sur la Cour fédérale ne s'applique pas au sous-ministre ni au Tribunal, dans le cas de procédures régies par la présente partie et relatives aux marchandises des États-Unis.

1988, ch. 65, art. 44.

96.3 (1) Le ministre du Commerce extérieur peut demander, en conformité avec la législation américaine de mise en œuvre de l'Accord de libre-échange, la révision d'une décision finale par un groupe formé en application de cette législation.

Demande de révision

(2) Ce ministre est tenu de faire cette demande lorsque requête en est faite au secrétaire canadien par une personne qui aurait droit, selon cette législation, sans égard à la législation américaine de mise en œuvre de l'Accord de libre-échange, d'engager, aux États-Unis, des procédures de révision judiciaire de la décision en cause.
giving effect to the Free Trade Agreement, request that the final determination be reviewed by a panel established under that law.

(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.

(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.

RÈGLEMENTS

97. (1) Le gouverneur en conseil peut, par règlement pris sur recommandation du ministre des Finances:

a) prendre toute mesure d’ordre réglementaire prévue par la présente loi;

b) préciser les cas où peuvent être jointes des enquêtes menées par le sous-ministre, qu’il s’agisse d’au moins deux enquêtes de dumping, d’au moins deux enquêtes de subventionnement ou d’au moins une enquête de dumping et d’au moins une enquête de subventionnement, de manière à les réunir en une seule et de les mener, ainsi que les personnes à aviser et les modalités de l’avis;

c) définir, pour l’application de la définition de «préjudice sensible» au paragraphe 2(1), le terme «produit agricole»;

d) définir, pour l’application de la définition de «subvention» au paragraphe 2(1), les termes «droits» ou «taxes internes»;

e) définir, pour l’application de l’alinéa 19(b) ou du sous-alinéa 20c)(ii), les termes «coût de production», «un montant pour les frais, notamment les frais administratifs et les frais de vente» et «un montant pour les bénéfices»;

f) définir, pour l’application du sous-alinéa 25c)(ii) ou 25d)(i), le terme «un montant pour les bénéfices»;

g) définir, pour l’application du paragraphe 45(2) ou des articles 89 ou 95, le terme «personne intéressée»;

g.l) assimiler un gouvernement au Canada ou aux États-Unis à la personne autorisée à
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entitled to make a request to the Canadian Secretary under subsection 77.11(2);

(g.2) defining the expression “goods of the United States” for the purpose of this Act;

(h) prescribing the procedure to be followed in an investigation ordered by the Governor in Council under subsection 7(1);

(i) providing for the selection of an interest rate, from among or by reference to interest rates prevailing in or out of Canada at the time of the sale referred to in subsection 21(1), by reference to which the determination referred to in paragraph 21(1)(a) shall be made in the circumstances described in clause 21(1)(a)(ii)(B);

(j) providing for the selection of an interest rate, from among or by reference to interest rates prevailing in or out of Canada at the time of the sale referred to in subsection 27(1), by reference to which the determination referred to in paragraph 27(1)(a) shall be made in the circumstances described in clause 27(1)(a)(ii)(B);

(k) providing for the determination of or specifying the date as of which the equivalent dollar value of any amount that is expressed in the currency of a country other than Canada and that is used or taken into account for any purpose in the administration or enforcement of this Act shall be ascertained, determined or calculated; and

(l) generally, for carrying out the purposes and provisions of this Act.

(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.

(2) Le gouverneur en conseil peut, par règlement et sur recommandation du ministre des Finances, fixer les taux d’intérêt ou les règles de fixation des taux d’intérêt pour l’application de la présente loi.

“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.”

— R.S., 1985, c. 41 (3rd Supp.), s. 115:

L.R. (1985), ch. 41 (3rd suppl.), art. 115:

«115. (1) Les décrets d’application — pris par le gouverneur en conseil — de l’article 7 du Tarif des douanes, chapitre C-41 des Statuts revisés du Canada de 1970, dans sa version antérieure à l’entrée en vigueur de la Loi sur les mesures spéciales d’importation, qui étaient en vigueur à l’entrée en vigueur de cette loi sont réputés avoir et avoir eu le même effet, pour l’application de cette loi et demeurent en vigueur, et sont réputés être demeurés en vigueur, comme s’ils avaient été une ordonnance ou une conclusion visée aux articles 3 ou 4 de cette loi et ont été rendue en application de l’article 43 de cette loi. Cette même loi s’applique, et est réputée s’être appliquée, à ces décrets comme s’ils avaient été pris à la date de son entrée en vigueur.

(2) Il demeure entendu que, pour les fins du réexamen d’un décret visé au paragraphe (1) en application de l’article 76 de la Loi sur les mesures spéciales d’importation, le réexamen peut porter sur un rapport effectué en application de l’article 16.1 de la Loi antidumping, chapitre A-15 des Statuts revisés du Canada de 1970, sur lequel le décret est fondé, comme si le rapport faisait partie du décret.»
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Ottawa, March 31, 1989

SUBJECT

SPECIAL IMPORT MEASURES ACT
REGULATIONS

This Memorandum contains the regulations according to which normal value, export price and amount of subsidy are determined under the Special Import Measures Act. It also contains the Regulations pertaining to dispute settlement respecting goods of the United States.

Regulations

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. (American Secretariat)

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 adding thereto 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 discounted 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.

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Delivery Costs

7. For the purposes of sections 15 and 19 and paragraph 20(c) of the Act, where the like goods are sold at delivered prices, the price of the like goods shall be adjusted by deducting therefrom the cost of their delivery.

8. For the purposes of sections 15 and 19 and paragraph 20(c) 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 the amount that reflects the average cost incurred by the vendor in delivering the like goods to destinations in that zone.

Substitution of Trade Level

9. For the purposes of sections 15 and 19 and subparagraph 20(c)(i) of the Act, where purchasers of like goods who are at the trade level nearest and subsequent to that of the importer in Canada have been substituted for purchasers who are at the same or substantially the same trade level as that of the importer, the price of the like goods shall be adjusted by deducting therefrom

(a) the amount of any costs, charges or expenses incurred by the vendor of the like goods in selling to purchasers who are at the trade level nearest and subsequent to that of the importer that result from activities that would not be performed if the like goods were sold to purchasers who are at the same or substantially the same trade level as that of the importer; or

(b) in the absence of information relating to the costs, charges and expenses mentioned in paragraph (a), an amount not exceeding the discount that is generally granted on the sale of like goods by other vendors in the country of export to purchasers who are at the same or substantially the same trade level as the importer.

Taxes and Duties

10. For the purposes of sections 15, 19 and 20 of the Act, where any taxes or duties that are borne by like goods or any materials or components forming a part thereof are not borne by the goods sold to the importer in Canada, the price of the like goods shall be adjusted by deducting therefrom the amount of those taxes or duties.

March 31, 1989

Frais de livraison

7. Pour l’application des articles 15 et 19 et de l’alinéa 20c de la Loi, si les marchandises similaires sont vendues à des prix incluant les frais de livraison, leur prix est rectifié par déduction de ces frais.

8. Pour l’application des articles 15 et 19 et de l’alinéa 20c de la Loi, si les marchandises similaires sont généralement vendues à un prix incluant un montant fixé pour livraison, quelle que soit la destination, à l’intérieur d’une zone qui, selon les pratiques commerciales habitudes du vendeur des marchandises similaires, est considérée comme une zone de transport courante, leur prix est rectifié par déduction du montant qui correspond aux frais moyens engagés par le vendeur pour livrer les marchandises similaires dans cette zone.

Remplacement du niveau du circuit de distribution

9. Pour l’application des articles 15 et 19 et du sous-alinéa 20c(i) de la Loi, si les acheteurs de marchandises similaires situés au niveau suivant du circuit de distribution le plus proche de celui de l’importateur se trouvant au Canada sont préférés aux acheteurs situés au même niveau ou presque du circuit de distribution que l’importateur, le prix des marchandises similaires est rectifié par déduction:

(a) du montant des frais engagés par le vendeur des marchandises similaires dans le cas d’une vente à des acheteurs situés au niveau suivant du circuit de distribution le plus proche de celui de l’importateur et qui découlent d’activités qui n’auraient pas été exercées si les marchandises similaires avaient été vendues au même niveau ou presque du circuit de distribution que l’importateur; ou

(b) à défaut de renseignements relatifs aux frais visés à l’alinéa a), d’un montant ne dépassant pas l’escompte qui est généralement accordé à l’occasion de la vente de marchandises similaires par d’autres vendeurs se trouvant dans le pays d’exportation à des acheteurs qui se situent au même niveau ou presque du circuit de distribution que l’importateur.

Taxes et droits

10. Pour l’application des articles 15, 19 et 20 de la Loi, si des taxes ou droits qui frappent les marchandises similaires, leurs matériaux ou leurs pièces composantes ne frappent pas les marchandises vendues à l’importateur se trouvant au Canada, le prix des marchandises similaires est rectifié par déduction du montant de ces taxes ou droits.

31 mars 1989
Cost of Production and Other Costs

11. For the purposes of paragraph 19(b) and subparagraph 20(c)(ii) of the Act,

(a) subject to section 12 of these Regulations, the expression "cost of production", in relation to any goods, means the aggregate of all costs that are

(i) attributable to, or in any manner related to, the production of the goods, or

(ii) directly attributable to the design or engineering of the goods;

(b) subject to section 13 of these Regulations, the expression "an amount for profits", in relation to any goods, means an amount equal to

(i) where there are a number of sales of like goods made by the exporter which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on such sales,

(ii) where subparagraph (i) is not applicable but there are a number of sales of goods of the same general category as the goods sold to the importer in Canada made by the exporter which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on such sales,

(iii) where subparagraphs (i) and (ii) are not applicable but there are a number of sales of goods of the same general category as the goods sold to the importer in Canada made by other producers located in the country of export which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on such sales,

(iv) where subparagraphs (i) to (iii) are not applicable but there are a number of sales of goods of the same general category as the goods sold to the importer in Canada made by other producers located in the country of export which, taken together, produce a profit and are such as to permit a proper comparison, the weighted average profit made on such sales, or

(v) where subparagraphs (i) to (iv) are not applicable, 8 per cent of the sum of

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

(B) the amount for administrative, selling and all other costs, as determined in accordance with paragraph (c), in relation to the goods; and

11. Pour l’application de l’alinéa 19(b) et du sous-alinéa 20c(ii) de la Loi.

a) sous réserve de l’article 12 du présent règlement, le terme «coût de production» désigne l’ensemble

(i) des coûts attribuables ou liés à la production des marchandises, ou

(ii) des coûts directs des travaux de conception ou d’ingénierie nécessaires à la production des marchandises.

b) sous réserve de l’article 13 du présent règlement, le terme «un montant pour les bénéfices» désigne un montant égal à

(i) si l’exportateur a effectué un nombre de ventes de marchandises similaires qui ont dans l’ensemble produit des bénéfices et permis une comparaison utile, à la moyenne pondérée des bénéfices réalisés sur ces ventes,

(ii) si le sous-alinéa (i) n’est pas applicable mais que l’exportateur a effectué un nombre de ventes de marchandises de la même catégorie générale que les marchandises vendues à l’importateur se trouvant au Canada, qui ont dans l’ensemble produit des bénéfices et permis une comparaison utile, à la moyenne pondérée des bénéfices réalisés sur ces ventes,

(iii) si les sous-alinéas (i) et (ii) ne sont pas applicables mais que d’autres producteurs se trouvant dans le pays d’exportation ont effectué un nombre de ventes de marchandises similaires qui ont dans l’ensemble produit des bénéfices et permis une comparaison utile, à la moyenne pondérée des bénéfices réalisés sur ces ventes,

(iv) si les sous-alinéas (i) à (iii) ne sont pas applicables mais que d’autres producteurs se trouvant dans le pays d’exportation ont effectué un nombre de ventes de marchandises de la même catégorie générale que les marchandises vendues à l’importateur se trouvant au Canada, qui ont dans l’ensemble produit des bénéfices et permis une comparaison utile, à la moyenne pondérée des bénéfices réalisés sur ces ventes,

(v) si les sous-alinéas (i) à (iv) ne sont pas applicables, à 8% de la somme

A) du coût de production des marchandises, et

B) du montant pour les frais, notamment les frais administratifs et les frais de vente, établi conformément à l’alinéa c):
(c) the expression "an amount for administrative, selling and all other costs", in relation to any goods, means an amount equal to the sum of

(i) all administrative and selling costs that are directly attributable to the production and sale of the goods,

(ii) the amount that reflects the cost of any warranty against defect or guarantee of performance attributable to the goods, and

(iii) the estimated amount of all selling, administrative and other costs, including any costs attributable to the design or engineering of the goods that are not included in their cost of production, that are attributable to the goods but not included in subparagraphs (i) and (ii).

12. Where the costs that are directly attributable to the design or engineering of goods sold to an importer in Canada (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 the producer of the first mentioned goods, can be determined, the cost described in subparagraph 11(1)(ii) in relation to the first mentioned goods is deemed to be the amount that reflects the cost of the design or engineering of the goods of the same general category, such amount being adjusted to reflect the value of any differences in the design or engineering between the first mentioned goods and the goods of the same general category.

13. For the purpose of determining "an amount for profits" pursuant to paragraph 11(b),

(a) sales of like goods and sales of goods of the same general category 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 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 shall be adjusted in the manner provided for in sections 3 to 10 with the substitution of the expression "goods of the same general category" for the expression "like goods", wherever that expression occurs therein.

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14. For the purpose of determining the normal value of any goods pursuant to paragraph 20(c) of the Act, sections 4 to 6, 9 and 11 shall be read with the substitution of

(a) the expression "country of production" for the expression "country of export", wherever that expression occurs therein; and

(b) the word "producer" for the word "exporter", wherever that word occurs therein.

15. For the purpose of determining the normal value of any goods pursuant to paragraph 20(d) of the Act, sections 4 to 6 shall be read with the substitution of

(a) the expression "vendor in Canada of the imported like goods" for the word "exporter", wherever that word occurs therein; and

(b) the word "Canada" for the expression "the country of export", wherever that expression occurs therein.

16. For the purpose of determining the normal value of any goods pursuant to paragraph 20(d) of the Act, the price of like goods sold in Canada shall be adjusted by deducting therefrom an amount equal to the sum of

(a) all costs, including any duties and taxes, that result from the importation of the like goods or their sale by the importer to the purchaser in Canada;

(b) the amount of profit, determined in accordance with section 17, made by the importer of the like goods on their sale;

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

(d) all other costs, charges and expenses incurred by the exporter or importer of the like goods, or any other person, that result from the exportation of the like goods or arise from their shipment to Canada.

17. For the purposes of paragraph 16(b), the amount of profit made by an importer on the sale of like goods in Canada is

(a) the amount of profit that generally results from sales of like goods by vendors in Canada who are at the same or substantially the same trade level as the importer of the like goods to purchasers in Canada who are not associated with those vendors:

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(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) if the amounts described in paragraphs (a) and (b) cannot be determined, an amount equal to 7.4 per cent of the price at which the like goods were sold by the importer of the like goods.

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 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;

(b) s'il est impossible de déterminer le montant visé à l'alinéa a), le montant des bénéfices qui découlent généralement de la vente de marchandises de la même catégorie générale que les marchandises similaires, par des vendeurs se trouvant au Canada qui se situent au même niveau ou presque du circuit de distribution que l'importateur des marchandises similaires, à des acheteurs se trouvant au Canada et qui ne sont pas associés à ces vendeurs;

c) s'il est impossible de déterminer les montants visés aux alinéas a) et b), un montant égal à 7,4% du prix auquel les marchandises similaires ont été vendues par l'importateur des marchandises similaires.

Taux d'escompte pour la valeur normale

18. Pour l'application du paragraphe 21(1) de la Loi, en l'absence du taux d'intérêt visé à la disposition 21(1)(a)(ii)(A) de la Loi ou dans l'impossibilité de la déterminer, le taux d'intérêt à choisir est, selon le cas :

a) le taux d'intérêt en vigueur, à la date de la vente des marchandises similaires, dans le pays où les marchandises similaires ont été vendues et applicable aux prêts commerciaux qui sont faits dans ce pays dans la même monnaie que celle dans laquelle sont exprimés les paiements pour les marchandises similaires et selon les modalités de crédit, autre que le taux d'intérêt, qui se rapprochent le plus de celles qui s'appliquent à la vente;

b) en l'absence du taux d'intérêt visé à l'alinéa a) ou dans l'impossibilité de le déterminer, le taux d'intérêt le plus bas en vigueur, à la date de la vente des marchandises similaires, dans un pays autre que le pays où les marchandises similaires ont été vendues et applicable aux prêts commerciaux qui sont faits dans cet autre pays dans la même monnaie que celle dans laquelle sont exprimés les paiements pour les marchandises similaires et selon des modalités de crédit, autre que le taux d'intérêt, comparables à celles qui s'appliquent à la vente;

c) en l'absence des taux d'intérêt visés aux alinéas a) et b) ou dans l'impossibilité de les déterminer, le taux d'intérêt le plus bas en vigueur, à la date de la vente des marchandises similaires, dans un pays autre que le pays où les marchandises similaires ont été vendues et applicable aux prêts commerciaux qui sont faits dans cet autre pays dans la même monnaie que celle dans laquelle sont exprimés les paiements pour les marchandises similaires et selon les modalités de crédit, autre que le taux d'intérêt, qui se rapprochent le plus de celles qui s'appliquent à la vente:

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(d) where the interest rates described in paragraphs (a) to (c) cannot be ascertained or where there are no such interest rates, the interest rate equal to the average yield in the year preceding the sale of the like goods on securities, for terms not exceeding one year, issued by the government that issues the currency in which the payments for the like goods are expressed: or

(e) where the interest rates described in paragraphs (a) to (d) cannot be ascertained or where there are no such interest rates, the average interest rate paid on Special Drawing Rights held by the International Monetary Fund in the year preceding the sale of the like goods.

19. Where the normal value of any goods is to be determined under paragraph 20(d) of the Act section 18 of these Regulations shall be read with the substitution of

(a) the word "Canada" for the expressions "the country in which the like goods were sold" and "that country", wherever those expressions occur therein; and

(b) the expression "sale of the imported like goods" for the expression "sale of the like goods", wherever that expression occurs therein.

Export Price Adjustments

Profits

20. For the purposes of subparagraph 25(c)(ii) of the Act, the expression "an amount for profit", in relation to a sale of goods by an importer, means the amount of profit that would be made in the ordinary course of trade on the sale of the goods.

21. For the purposes of subparagraph 25(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 any imported goods have been incorporated, means the amount of profit that would be made in the ordinary course of trade on the sale of such goods.

22. For the purposes of sections 20 and 21, the amount of profit that would be made in the ordinary course of trade on the sale of the goods is

(a) the amount of profit that generally results from sales of like goods in Canada by vendors who are at the same or substantially the same trade level as the importer to purchasers in Canada who are not associated with those vendors:

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Rectification du prix à l'exportation

Bénéfices

20. Pour l'application du sous-alinéa 25c(ii) de la Loi, le terme «un montant pour les bénéfices» désigne un montant égal aux bénéfices qui seraient réalisés par l'importateur lors de la vente des marchandises dans le cours originaire des affaires.

21. Pour l'application du sous-alinéa 25d(i) de la Loi, le terme «un montant pour les bénéfices» désigne un montant égal aux bénéfices qui seraient réalisés dans le cours ordinaire des affaires. Lors de la vente des marchandises montées, conditionnées ou ayant fait l'objet d'une étape ultérieure de fabrication, ou des marchandises dans la fabrication desquelles des marchandises importées ont été incorporées.

22. Pour l'application des articles 20 et 21, le montant des bénéfices réalisés lors de la vente des marchandises dans le cours ordinaire des affaires est, selon le cas:

(a) le montant des bénéfices qui découlent généralement de la vente de marchandises similaires au Canada par des vendeurs se situant au même niveau ou presque du circuit de distribution que l'importateur, à des acheteurs se trouvant au Canada et qui ne sont pas associés à ces vendeurs;

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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, the amount equal to 7.4 per cent of the price at which the goods were sold by the importer.

(c) the amounts described in paragraphs (a) and (b) cannot be determined, an amount equal to the average yield in the year preceding the sale 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

(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

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(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 purposes of section 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 bill of lading for the transportation of the goods from the place of original shipment shows the ultimate destination of the goods to be a specified port in Canada;

(b) the goods have not been entered for consumption or for warehouse or have not remained for any purpose other than transhipment in any intermediate country; and

(c) the original bill of lading or copy thereof is filed with the Deputy Minister.

PART II
AMOUNT OF SUBSIDY

General

26. There shall be deducted from the amount of the 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 for the purpose of offsetting the subsidy; and

(c) the amount of any loss in the value of subsidy that results from the deferred receipt of the subsidy where the deferral has been imposed by the government that granted the subsidy.

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Grant

27. Where the subsidy in relation to any subsidized goods is in the form of a grant, the amount of the 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 the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used over the anticipated useful life of the fixed asset;

(c) where the use of the grant was, or is, not for the purposes described in paragraph (a) or (b) or is unknown, the estimated total quantity of subsidized goods the production, purchase, distribution, transportation, sale, export or import of which was, or will be, carried out by the person who received the grant during the weighted average useful life, not exceeding ten years, of fixed assets used by the industry of that person.

Prime

27. Dans le cas où la subvention pour des marchandises subventionnées est octroyée sous forme de prime, le montant de la subvention se détermine par la répartition de la prime, conformément aux principes comptables généralement reconnus, de la façon suivante :

(a) si la prime devait ou doit servir aux dépenses d'exploitation découlant de la production, de l'achat, de la distribution, du transport, de la vente, de l'exportation ou de l'importation de marchandises subventionnées, elle est répartie sur la quantité totale estimative des marchandises subventionnées auxquelles elle s'applique ;

(b) si la prime devait ou doit servir à l'achat ou à la construction d'immobilisations, la prime est répartie sur la quantité totale estimative des marchandises subventionnées pour la production, l'achat, la distribution, le transport, la vente, l'exportation ou l'importation desquelles les immobilisations ont été ou seront utilisées pendant leur durée utile prévue ;

(c) si la prime devait ou doit servir à une fin non mentionnée aux alinéas (a) ou (b), ou à une fin inconnue, elle est répartie sur la quantité totale estimative de marchandises subventionnées dont la production, l'achat, la distribution, le transport, la vente, l'exportation ou l'importation desquelles les immobilisations ont été ou seront effectuées par le bénéficiaire de la prime pendant la moyenne pondérée de la durée utile, ne dépassant pas dix ans, des immobilisations utilisées par l'industrie de ce bénéficiaire.

Loan at a Preferential Rate

28. Where the subsidy in relation to any subsidized goods is in the form of a preferential loan to a person engaged in the production, purchase, distribution, transportation, sale, export or import of goods, the amount of the subsidy shall be determined by distributing, in accordance with generally accepted accounting principles, the present value of the sum of

(a) the amount determined in accordance with section 29, and

(b) any costs incurred by the government that provided the preferential loan and not recovered from the borrower that would be payable by that government if a similar loan were made to that government,

such present value being determined as of the date of the sale of the goods to the importer in Canada and by reference to the discount rate selected in accordance with section 30 over the quantity of goods determined in accordance with section 31.

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29. The amount, for the purpose of paragraph 28(a), is the difference between

(a) the amount of interest payable on the preferential loan; and

(b) the amount of interest that would be payable on a loan, to the government that provided the preferential 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, the interest rate on such a loan being

(i) the interest rate prevailing, in the country of the government that provided the preferential loan, at the date the preferential loan was made, for loans to that government 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 comparable to the credit terms of the preferential loan,

(ii) where the interest rate described in subparagraph (i) cannot be ascertained or where there is no such interest rate, the interest rate prevailing, in the country of the government that provided the preferential loan, at the date the preferential loan was made, for loans to that government 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 comparable to the credit terms of the preferential loan,

(iii) where the interest rates described in subparagraphs (i) and (ii) cannot be ascertained or where there are no such interest rates, the lowest interest rate prevailing, at the date the preferential loan was made, in any country other than the country of the government that provided the preferential loan, for loans to that government 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 comparable to the credit terms of the preferential loan,

(iv) where the interest rates described in subparagraphs (i) to (iii) cannot be ascertained or where there are no such interest rates, the lowest interest rate prevailing, at the date the preferential loan was made, in any country other than the country of the government that provided the preferential loan, for loans to that government in the same currency in which the payments for the preferential loan are expressed, and on credit terms, other than the interest rate, the most closely approximate the credit terms of the preferential loan.

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30. The discount rate, for the purpose of section 28, is the same as the interest rate determined in accordance with subparagraphs 29(b)(i) to (vi).

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 the production, purchase, distribution, transportation, sale, export or import of which the fixed asset was, or will be, used over the anticipated useful life of the fixed asset;

(c) where the use of the preferential loan 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 preferential loan during the weighted average useful life of fixed assets, not exceeding ten years, used by the industry of that person.

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 the 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.

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30. Pour l’application de l’article 28, le taux d’escompte est égal au taux d’intérêt déterminé conformément aux sous–alinéas 29(b)(i) à (vi).

31. La quantité de marchandises visée à l’article 28 est

(a) dans les cas où le prêt à taux préférentiel devait ou doit servir aux dépenses d’exploitation découlant de la production, l’achat, la distribution, le transport, la vente, l’exportation ou l’importation de marchandises subventionnées, la quantité totale estimative des marchandises subventionnées auxquelles ce prêt s’applique;

(b) dans les cas où le prêt à taux préférentiel devait ou doit servir à l’achat ou à la construction d’immobilisations, la quantité totale estimative des marchandises subventionnées pour la production, l’achat, la distribution, le transport, la vente, l’exportation ou l’importation desquelles les immobilisations ont été ou seront utilisées pendant leur durée utile prévue;

(c) dans les cas où le prêt à taux préférentiel devait ou doit servir à une fin non mentionnée aux alinéas (a) ou (b), ou à une fin inconnue, la quantité totale estimative des marchandises subventionnées dont la production, l’achat, la distribution, le transport, la vente, l’exportation ou l’importation ont été ou seront effectuées par le bénéficiaire du prêt à taux préférentiel pendant la moyenne pondérée de la durée utile, ne dépassant pas dix ans, des immobilisations utilisées par l’industrie de ce bénéficiaire.

Crédits, remboursements ou exemptions d’impôts sur le revenu

32. Dans les cas où la subvention pour des marchandises subventionnées est conditionnelle à leur exportation et est octroyée sous forme d’un crédit d’impôts, d’un remboursement d’impôts ou d’une exemption d’impôts sur le revenu prélevés au cours d’une période donnée, le montant de la subvention est égal au quotient obtenu par la division

(a) du montant du crédit, du remboursement ou des impôts non payés en raison de l’exemption, selon le cas.

(b) la quantité de marchandises exportées durant la période.

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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 dividing the result by the quantity of goods exported during the period for which taxes would have been paid had the taxes not been deferred.

34. The amount, for the purpose of section 33, is the present value of the interest that would be payable by the government that permitted the deferral of taxes for a loan to that government in an amount equal to the amount of the deferred taxes, for a term equal to the period of the deferral and with repayment terms similar to the tax payment schedule that applies to the deferred taxes, such present value being determined as of the date of the sale of the goods to the importer in Canada and the interest rate on such a loan being equal to the discount rate which is

(a) the interest rate prevailing, in the country of the government that permitted the deferral, at the date the taxes would have been paid had the taxes not been deferred, for such loans to that government;

(b) where the interest rate described in paragraph (a) cannot be ascertained or where there is no such interest rate, the lowest rate prevailing, at the date the taxes would have been paid had the taxes not been deferred, in any country other than the country of the government that permitted the deferral, for such loans to the government that permitted the deferral in the currency of the country of the government;

(c) where the interest rates described in paragraphs (a) and (b) 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 to the importer in Canada on securities, for terms not exceeding one year, issued by the government of the country that permitted the deferral in the currency of that government; or

(d) where the interest rates described in paragraphs (a) to (c) 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 to the importer in Canada.

Over-refund of Indirect Taxes

35. Where the subsidy in relation to any subsidized goods is contingent on the export of those goods and in the form of a refund of taxes levied on the production, purchase, distribution, transportation, sale, export or import of goods and the amount of the refund exceeds the amount of taxes paid, the amount of the subsidy shall be determined by deducting the amount of tax paid from the amount of the refund and dividing the result by the quantity of goods, in relation to which the refund was granted, exported during the period for which the taxes were refunded.

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Report des impôts sur le revenu

33. Dans les cas où la subvention pour des marchandises subventionnées est conditionnelle à leur exportation et est octroyée sous forme de report des impôts sur le revenu, le montant de la subvention se détermine par la répartition, conformément aux principes comptables généralement reconnus, du montant établi conformément à l'article 34 sur la quantité de marchandises exportées au cours de la période pendant laquelle les impôts auraient dû être payés s'ils n'avaient pas été reportés.

34. Le montant visé à l'article 33 correspond à la valeur actuelle de l'intérêt, déterminée à la date de la vente à l'importateur se trouvant au Canada, qui serait payable par le gouvernement qui a autorisé le report d'impôts, si un prêt égal au montant des impôts reportés lui était consenti pour la période du report et selon des modalités de remboursement semblables au calendrier des versements d'impôts qui s'applique aux impôts reportés. Le taux d'intérêt applicable à un tel prêt est égal au taux d'escompte égal, selon le cas :

a) au taux d'intérêt en vigueur, à la date à laquelle les impôts auraient dû être payés s'ils n'avaient pas été reportés, dans le pays du gouvernement qui a autorisé le report, et applicable à de tels prêts consentis à ce gouvernement;

b) en l'absence du taux d'intérêt visé à l'alinéa a) ou dans l'impossibilité de le déterminer, au taux d'intérêt le plus bas en vigueur, à la date à laquelle les impôts auraient dû être payés s'ils n'avaient pas été reportés, dans tout pays autre que le pays du gouvernement qui a autorisé le report et applicable à de tels prêts consentis à ce gouvernement dans la monnaie du pays de ce gouvernement;

(c) en l'absence des taux d'intérêt visés aux alinéas a) et b) ou dans l'impossibilité de les déterminer, au taux d'intérêt égal au rendement moyen, dans l'année précédant la vente à l'importateur se trouvant au Canada, des titres à échéance maximale d'un an émis par le gouvernement du pays qui a autorisé le report, dans la monnaie du pays de ce gouvernement;

(d) en l'absence des taux d'intérêt visés aux alinéas a) à c) ou dans l'impossibilité de les déterminer, au taux d'intérêt moyen servi sur les droits de tirage spéciaux détenus par le Fonds monétaire international dans l'année précédant la vente à l'importateur se trouvant au Canada.

Remboursement en trop d'impôts indirects

35. Dans les cas où la subvention pour des marchandises subventionnées est conditionnelle à leur exportation et est octroyée sous forme d'un remboursement d'impôts prélevés sur la production, l'achat, la distribution, le transport, la vente, l'exportation ou l'importation de marchandises, le montant de la subvention est égal à la différence entre le montant du remboursement et le montant des impôts payés, si le premier montant est supérieur au deuxième, divisée par la quantité de marchandises visées par le remboursement des impôts qui ont été exportées au cours de la période de remboursement.
36. Where the subsidy in relation to any subsidized goods is in the form of the provision, by a government, of goods or services used in the production, purchase, transportation, distribution or sale of goods destined for export on terms more favourable than those for goods destined for domestic consumption, the amount of the subsidy shall be determined by dividing the value of the difference between the terms applicable to the goods destined for export and those applicable to the goods destined for domestic consumption by the quantity of exported goods in relation to which the goods or services were provided.

PART II.1

DISPUTE SETTLEMENT RESPECTING GOODS OF THE UNITED STATES

36.1 For the purposes of subsections 77.11(1), (5) and (6), 77.13(5), 77.17(1) and (3) and 77.19(5) of the Act, the American Secretary is the prescribed agency of the United States government.

36.2 A government of a province of Canada or of a state of the United States that is aggrieved by a definitive decision shall be deemed to be a person entitled to make a request to the Canadian Secretary under subsection 77.11(2) of the Act.

36.3 For the purposes of subsections 77.11(3) and 77.13(2) of the Act, the Department of State of the United States is the prescribed department of the United States government.

36.4 For the purposes of subsection 77.12(1) of the Act, the prescribed manner by which notice of an intention to apply or appeal is given to persons who, but for section 77.12 of the Act, would be entitled to apply or appeal shall be by

(a) serving a notice in writing of the intention on

(i) the Canadian Secretary and the American Secretary, and

(ii) every person to whom notice of the definitive decision was sent by the Deputy Minister or every person that appeared in the proceedings before the Tribunal, as the case may be; and

(b) publication of the notice of the intention in the Canada Gazette.

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36.5 For the purposes of subsection 77.15(2) of the Act, a panel shall have the powers, rights and privileges of a superior court of record to compel the production of and to examine the administrative record of proceedings in respect of the definitive decision, other than government information, as that expression is defined by the rules, for the purpose of the full review of the definitive decision.

36.6 For the purposes of subsection 77.19(2) of the Act, a committee shall have the following powers, rights and privileges of a superior court of record:

(a) the power to compel the production of and to examine the record of the panel review, for the purpose of the full review of the decision of the panel; and

(b) where the grounds of the extraordinary challenge are the grounds set out in subparagraphs 13(a)(i) and 13(b) of Article 1904 of the Free Trade Agreement, the following additional powers, rights and privileges:

(i) the power to compel the production of and to examine documents relevant to those grounds;

(ii) the power to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath or on solemn affirmation, and

(iii) the power to administer oaths and affirmations.

36.7 For the purposes of subsection 77.21(2) of the Act, the following are prescribed persons:

(a) each member of the staff of a panel or committee;

(b) the Canadian Secretary, the American Secretary and the staff of the Secretariat and of the American Secretariat;

(c) counsel for participants in the proceedings of the panel or committee and employees of those counsel to whom confidential, personal, business proprietary or privileged information may be made available in respect of those proceedings; and

(d) any other person to whom confidential, personal, business proprietary or privileged information is made available in respect of proceedings under Part II of the Act.
PART III
GENERAL

Agricultural Product

37. For the purpose of the definition "material injury" in subsection 2(1) of the Act, the expression "agricultural product" includes any product that is an agricultural product or commodity by virtue of an Act of Parliament or of the legislature of a province.

Joining Investigations

38. Subject to section 39, where
(a) two or more dumping investigations,
(b) two or more subsidy investigations, or
(c) one or more dumping investigations and one or more subsidy investigations
deal with the same or like goods, the investigations may be joined and carried on as one investigation.

39. An investigation may not be joined pursuant to section 38 if a preliminary determination has been made in respect thereof.

40. Where investigations are joined pursuant to section 38, the Deputy Minister shall cause a notice of the joining to be given in writing to the importers, exporters, governments of the countries of export and complainants, if any, involved in the investigations.

41. For the purpose of subsection 45(2) of the Act, the expression "person interested" means any person who is
(a) engaged in the production, purchase, sales, export or import of any goods that are the subject of an investigation,
(b) engaged in the production, purchase or sale of any goods produced in Canada that are like goods in relation to any goods that are the subject of an investigation,
(c) acting on behalf of any person referred to in paragraph (a) or (b),
(d) required or authorized by any Act of Parliament or of the legislature of a province to make representations to the Tribunal on the question described in subsection 45(2) of the Act, or
(e) a user of any goods that are like goods in relation to any goods that are the subject of an investigation.

and includes any association whose purpose is to advocate the interests of consumers in Canada.

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PARTIE III
DISPOSITIONS GÉNÉRALES

Produit agricole

37. Pour l’application de la définition de "préjudice sensible" au paragraphe 2(1) de la Loi, le terme produit agricole comprend tout produit qui est un produit ou une marchandise agricole soumis au régime d’une loi du Parlement ou de la législature d’une province.

Enquêtes conjointes

38. Sous réserve de l’article 39, dans les cas où au moins deux enquêtes de dumping, au moins deux enquêtes de subventionnement ou au moins une enquête de dumping et au moins une enquête de subventionnement portent sur les mêmes marchandises ou sur des marchandises similaires, les enquêtes peuvent être jointes et menées comme une seule enquête.

39. Une enquête est jointe conformément à l’article 38 si une décision provisoire a été rendue à son égard.

40. Dans les cas où des enquêtes sont jointes conformément à l’article 38, le sous-ministre en informe par écrit les importateurs, les exportateurs, les gouvernements des pays d’exportation et, s’il y a lieu, les plaignants concernés par les enquêtes.

41. Pour l’application du paragraphe 45(2) de la Loi, le terme "personne intéressée" désigne toute personne qui, selon le cas.
(a) se livre à la production, à l’achat, à la vente, à l’exportation ou à l’importation de marchandises faisant l’objet d’une enquête,
(b) se livre à la production, à l’achat ou à la vente de marchandises produites au Canada qui sont similaires à celles faisant l’objet d’une enquête,
(c) agit au nom de toute personne visée aux alinéas (a) ou (b),
(d) est tenue par les lois du Parlement ou de la législature d’une province de présenter au Tribunal des observations sur la question visée au paragraphe 45(2) de la Loi ou est autorisée par ces lois à les présenter.
(e) utilise des marchandises similaires à celles faisant l’objet d’une enquête.

et, en outre, toute association dont l’objectif consiste à défendre les intérêts des consommateurs au Canada.

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For the purposes of subsection 89(1) and section 95 of the Act, a person referred to in paragraph 41 to; 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 fee payable under section 83 of the Act is

(a) where the information is printed matter in documentary form, fifteen cents per reproduced page; or

(b) where the information is in electro-magnetically or optically recorded form.

(i) an amount equal to the cost of the materials incorporated in the copy provided to the person requesting it, and

(ii) one dollar per recording copied.

Currency Conversion

44. Subject to section 45, where an amount 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 exchange rate prevailing on the date of sale expressed in terms of the dollar.

45. Where sufficient information has not been furnished or is not available at the time goods have been released from customs possession or entered for warehouse, whichever is the earlier, to enable the calculation under section 44 to be made on the basis of the date of sale, the date of shipment to Canada shall be used in place of the date of sale for the purpose of that section.

Re-determinations

46. Where a manufacturer, producer or exporter of goods of the United States files a request for re-determination, the manufacturer, producer or exporter is hereby prescribed for the purposes of subsection 59(4) of the Act.

47. For the purposes of subsections 56(1.1) and 58(2) of the Act, the manner for making a written request for re-determination shall be to deliver the request by hand or send the request by registered mail to the Director General, Assessment Programs Division, Customs Programs Branch of the Department of National Revenue, Customs and Excise, Ottawa, Ontario K1A 0L5.
48. For the purposes of subsections 56(1.1) and 58(2) of the Act, the information to accompany a request for a re-determination shall be

(a) a statement setting out the grounds on which the determination or re-determination is contested;

(b) a statement setting out the facts on which the rationale for making the request for re-determination is based;

(c) evidence in support of the facts referred to in paragraph (b); and

(d) where the request for re-determination is made by the importer of the goods, a copy of

(i) the documentation used in accounting for the goods under subsection 32(1), (3) or (5) of the Customs Act, and

(ii) where the goods were released prior to accounting, the documentation used in making an interim accounting for the goods under subsection 32(2) of the Customs Act, if different from the documentation referred to in subparagraph (i).

49. For the purposes of subsections 56(1.1), 58(2) and 59(4) and (5) of the Act, the Department of State of the United States is the prescribed department of the United States government.

48. Pour l’application des paragraphes 56(1.1) et 58(2) de la Loi, une demande de révision ou de réexamen doit être accompagnée des renseignements suivants :

a) l’énoncé des raisons pour lesquelles la décision ou la révision est contestée;

b) l’énoncé des faits sur lesquels se fonde la demande de révision ou de réexamen;

c) la preuve à l’appui des faits visés à l’alinéa b);

d) lorsqu’une demande de révision ou de réexamen est présentée par l’importateur de marchandises, une copie :

(i) d’une part, des documents utilisés pour faire la déclaration en détail des marchandises prévue aux paragraphes 32(1), (3) ou (5) de la Loi sur les douanes.

(ii) d’autre part, lorsque le dédouanement des marchandises a été effectué avant la déclaration en détail, les documents utilisés pour faire la déclaration provisoire des marchandises prévue au paragraphe 32(2) de la Loi sur les douanes, si ces documents diffèrent de ceux visés au sous-alinéa i).

49. Pour l’application des paragraphes 56(1.1) et 58(2), 59(4) et (5) de la Loi, le Département d’État des États-Unis est le ministère fédéral désigné du gouvernement des États-Unis.
# Memorandum D14-1-1

## REFERENCES

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**SERVICES PROVIDED BY THE DEPARTMENT ARE AVAILABLE IN BOTH OFFICIAL LANGUAGES.**

**THIS MEMORANDUM IS ISSUED UNDER THE AUTHORITY OF THE DEPUTY MINISTER OF NATIONAL REVENUE, CUSTOMS AND EXCISE.**

FTA Revision March 31, 1989

**LES SERVICES FOURNIS PAR LE MINISTÈRE SONT DISPONIBLES DANS LES DEUX LANGUES OFFICIELLES.**

**CE MÉMORANDUM A L'APPROBATION DU SOUS-MINISTRE DU REVENU NATIONAL, DOUANES ET ACCISE.**

Révision de l'ALE 31 mars 1989