QUESTIONS SUBMITTED BY CANADA ON THE
REVISED ANTI-DUMPING REGULATIONS OF THE UNITED STATES

1. Section 353.41: Calculation of United States price

In Section 353.41(a), the Secretary "will use sales or, in the absence of sales, likely sales" in calculating the United States price. "Likely sales" is defined in Section 353.2(t) as being "an irrevocable offer to sell". Does the inclusion of "likely sales" include unaccepted tender bids? If so, are the particular circumstances of the bid factored into the consideration of the bid price in the calculation of the US price?

2. Section 353.42: Fair value

In Section 353.42(b), the Secretary normally will examine not less than 60 per cent of the dollar value or volume of the merchandise during the course of his investigation. What criteria, if any, govern the exercise of DOC's discretion in choosing to examine either the dollar value of the volume of merchandise sold?

3. Section 353.43: Sales used in calculating foreign market value

In Section 353.43(b), the Secretary "will reject any fictitious sale or offer" in calculating foreign market value. What criteria is to be used in determining what is a "fictitious sale or offer"?

4. Section 353.44: Sales at varying prices

In Section 353.44(c), the Secretary will use any other method for calculating foreign market value which he deems appropriate if the methods set out in Section 353.44(a) or (b) are not applicable. Please enumerate what other methods would DOC use in circumstances not found in Section 353.44(a) or (b)?

5. Section 353.47: Exportation from an intermediate country

The Secretary will calculate foreign market value based on sales in an intermediate country if the criteria in Section 353.47(a)-(d) are met. Section 353.47(c) specifies one condition as being that the merchandise enters the commerce of the intermediate country but is not "substantially transformed". What is meant by the term "substantially transformed"?
6. **Section 353.50**: Calculation of foreign market value based on constructed value

In Section 353.50(c), involving transactions with related parties, the Secretary may disregard any direct or indirect transaction and calculate the amount (in determining an element of value) based on available information as to what the amount would have been if the transaction had occurred between unrelated parties. What would constitute "available information" in such circumstances? What criteria will the Department use in determining whether an indirect transaction should be disregarded?

7. **Section 353.51**: Calculation of foreign market value if sales are made at less than cost of production

In Section 353.51(a), the Secretary will disregard sales if they have been made over an extended period and in substantial quantities. What criteria are used in determining an "extended period" and "in substantial quantities"? Will consideration be given to the nature of the merchandise if below cost sales are a commercial necessity - such as in the case of a perishable product or products at the end of their life cycle?

8. **Section 353.56**: Differences in circumstances of sale

According to Section 353.56(b)(2), the Secretary has the right to cap deductions made to foreign market value for indirect selling expenses by the amount of indirect selling expenses incurred on sales in the US market. How is such a cap justified in light of Article 2:6 of the Code which states that: "Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability"?

9. **Section 353.58**: Level of trade

What criteria will DOC use in determining "adjustments" for differences affecting price comparability when levels of trade in the subject merchandise do not permit comparisons? What criteria will be used in determining "the most comparable commercial level of trade"?