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**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

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PRACTICAL ISSUES AND EXPERIENCE IN PROVIDING OPPORTUNITIES FOR INDUSTRIAL USERS AND CONSUMER ORGANIZATIONS TO PROVIDE INFORMATION UNDER ARTICLE 6.12

PRACTICAL ISSUES AND EXPERIENCE IN CONDUCTING "NEW SHIPPER" REVIEWS UNDER ARTICLE 9.5

Paper by Canada

The following communication, dated 19 October 1999, has been received from the Permanent Mission of Canada.

Article 6.12

Article 6.12 requires that anti-dumping authorities provide an opportunity for industrial users of the product under investigation and consumer organizations in the case of final products, to provide information which is relevant to the investigation, regarding dumping, injury and causality.

Canadian Practice

In Canadian practice, representations from industrial users and consumer organizations can be submitted to Revenue Canada or the Canadian International Trade Tribunal (the Tribunal) at any time during an investigation. However, if such representations raise issues of public interest, there are provisions¹ under Canada's anti-dumping law allowing for the initiation of a separate enquiry process to consider these arguments.

The purpose of a public interest enquiry is to assess whether anti-dumping duties should be lowered or eliminated in view of broader issues of public interest. In the past, enquiries of this nature have dealt with a range of issues including the impact of the duties on downstream users, the impact on competition in the domestic market and consumer interests.

The public interest enquiry process is initiated after a finding of material injury. Normally the process begins when, as a result of representations and arguments received during the injury enquiry, the Tribunal requests submissions from interested persons on issues respecting the public interest. In addition to the parties to the anti-dumping investigation, "person interested", as defined in law, includes downstream users, consumer associations and competition authorities. Based on the representations received from such persons, the Tribunal determines whether a formal enquiry on matters of public interest is warranted.

¹ Section 45 of the *Special Import Measures Act*.

A public interest enquiry is conducted in a similar fashion to an injury enquiry, in accordance with rules of procedural fairness including the holding of public hearings. All parties have a full opportunity to present their views and rebut the arguments of others. If, after hearing the matter, the Tribunal is of the opinion that there is a public interest in favour of the reduction or elimination of the anti-dumping duties, it issues a report to the Minister of Finance containing its opinion, with specific recommendations on the amount(s) by which the duties should be reduced, and supporting reasons².

Proposed Changes to Public Interest Provisions

The Government of Canada recently passed legislation to strengthen the public interest provisions of the *Special Import Measures Act*. These amendments along with proposed changes to the regulations are expected to come into effect in early 2000.

The amendments to the Act clarify the existing public interest provisions by establishing a “reasonable grounds” threshold for the consideration of public interest concerns by the Tribunal.

Second, the proposed regulations require the Tribunal to take into account factors relating to public interest that are prescribed by regulation. The non-exhaustive list of factors that might form a test for public interest include:

- significant damage to downstream users;
- problem of access to inputs due to imposition of the full duty;
- significant impact on choice or availability of products to consumers; and
- elimination of competition in the market place.

Finally, the amended legislation confers explicit authority on the Tribunal to recommend, as an option, a lower duty. Such a duty would be lower than the full margin of dumping, but sufficient to eliminate the injury caused to the domestic producers.

Questions for discussion

Canada would be interested in knowing how other members provide an opportunity for industrial users and consumers to provide relevant input, specifically, \$

- (a) How do other members take into account the “relevancy” of submissions from consumers and downstream users?
- (b) Are competition authorities, on behalf of consumers and downstream industries, allowed/required to provide input?
- (c) Can representations from these groups result in the reduction of anti-dumping duties?

Article 9.5

If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on

² The Tribunal’s report is published in the Canada Gazette.

an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Canada's Practice

The Canadian legislation, the *Special Import Measures Act* (section 13.2), implements Article 9.5 of the Anti-dumping Agreement by giving Revenue Canada the authority to initiate expedited reviews when certain conditions are met. These conditions, which are stated in both the Act and the *Special Import Measures Regulations* are:

1. The goods in question are subject to definitive anti-dumping or countervailing duties.
2. A request is made by an exporter of goods that are subject to an injury determination made by the Canadian International Trade Tribunal.
3. The exporter was not given "notice" of the investigation at the initiation of the investigation, at the preliminary determination or at the final determination of dumping; or the exporter was not requested to provide information in relation to the subject goods.
4. The exporter shows that it is not related to any of the exporters, in the exporting country, whose goods are subject to the injury determination made by the Canadian International Trade Tribunal.
5. Subject goods have been sold or consigned to an importer in Canada prior to the request for an expedited review.
6. The request is made in writing and contains the specific information, as prescribed in the Regulations, (regulation 55), in order to make a decision on the request.

As a matter of practice, Revenue Canada will initiate and conduct the review on an accelerated basis. If the exporter's request satisfies the conditions noted above, the expedited review normally is initiated within 15 working days of receipt of the request.

While there must be confirmation that goods have been sold or consigned to an importer in Canada in order to initiate an expedited review, the review itself is not limited to those specific products of the exporter. Since Canada maintains a prospective duty enforcement system, normal values and export prices for any reasonable number of models, grades and sizes of the goods may be calculated during the review for products being shipped in the future.

Once initiated, the review is conducted in an expeditious manner. In terms of meeting Canada's Article 6.1.1. obligation, the exporter is given the standard 30 days (plus 7 days for mailing) to respond to the request for information. While there are no legislated time frames to complete expedited or regular reviews, it is the current policy to complete a regular review within 90 days. Where necessary, this time frame may be extended. The Anti-dumping Agreement requires that the new shipper review be carried out "on an accelerated basis, compared to normal duty assessment and review proceedings". The final decision, issued to the exporter, is to be completed as promptly as possible within 90 days. At the conclusion of the review, Revenue Canada issues the normal values and export prices and calculates the final assessment of anti-dumping duties, if any.
