

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

Original: English

REPLIES TO QUESTIONS POSED BY NEW ZEALAND¹ CONCERNING
THE NOTIFICATION OF CANADIAN LAWS AND REGULATIONS²

The following communication, dated 11 January 1996, has been received from the Permanent Mission of Canada.

1. Re. Paragraphs 3(1)(a) and (b) of the *Special Import Measures Act (SIMA)*: Why has Canada not adopted a lesser duty rule?

Consistent with the permissive nature of the lesser duty provisions in Article 9.1 of the A-D Agreement and 19.2 of the SCM Agreement, Canada has not adopted a lesser duty rule. That being said, where the Canadian International Trade Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties, in full or in part, might not be in the public interest, section 45 of the SIMA, allows the Tribunal to so advise the Minister of Finance with facts/reasons in support. In this regard, interested persons can make representations with respect to public interest. There is statutory authority allowing the Minister of Finance to reduce duties.

2.(a) Re. Clause 5(a)(i)(A) of SIMA: Why does Canada not specify what constitutes a "considerable importation" of like goods? Does Canada plan to be consistent with the WTO and terminate an investigation where the volume of imports is less than three per cent or seven per cent collectively?

Canada has not defined what constitutes a "*considerable importation*" of like goods for the purposes of clause 5(a)(i)(A) of the Act since there is no requirement to do so in the A-D Agreement and, further, the A-D Agreement does not provide any quantitative measures that relate to the massive dumping provisions. What constitutes a "*considerable importation*" will depend, in large part, on the facts of a given case.

Article 5.8 of the A-D Agreement provides for the termination of an investigation where the volume of dumped imports, actual or potential, is negligible. Accordingly, the SIMA contains provisions, [i.e., section 35 and paragraph 41(1)(b)], respecting the termination of an investigation where the actual or potential volume of dumped imports is negligible.

¹G/ADP/W/155-G/SCM/W/162.

²G/ADP/N/1/CAN/2-G/SCM/N/1/CAN/2.

- (b) **Re Clause 5(a)(i)(B) of SIMA:** Under this clause, is it possible to levy an anti-dumping duty where imports do not constitute a considerable importation when the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury?

In order to levy an anti-dumping duty under section 5 of the SIMA, two conditions must be met. The first condition is met by satisfying either clause 5(a)(i)(A) or (B) and the second condition by satisfying either clause 5(a)(ii)(A) or (B). Therefore, a duty can be levied when clause 5(a)(i)(A) is not applicable provided that the conditions of clause 5(a)(i)(B) are satisfied, (i.e., the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury), and provided that one of clauses 5(a)(ii)(A) and (B) have been satisfied in respect of injury. This is consistent with Article 10.6 of the AD Agreement.

- (c) **What is the standard for "*should have been aware*"?**

This is based on an objective reasonableness standard.

3. **Re. Section 14 of SIMA:** This section gives the Governor in Council unlimited power to make regulations exempting any goods or class of goods from the application of the Act. What kinds of situations are intended to be exempted here?

This provision of the SIMA, which is intended to cover truly exceptional or emergency situations, has never been used. It might be used by the Governor in Council for broader policy purposes, (e.g., public health and safety) and where there is an important public interest which cannot await the normal section 45 "*public interest*" process.