

WORLD TRADE ORGANIZATION

RESTRICTED

G/SG/W/18

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(95-1978)

Committee on Safeguards

Original: English

QUESTIONS CONCERNING THE NOTIFICATION PROVIDED BY CANADA OF LAWS AND REGULATIONS UNDER ARTICLE 12.6 OF THE AGREEMENT

The following communication, dated 10 July 1995, has been received from the Office of the United States Trade Representative.

Please find enclosed the questions of the United States with regard to the laws, regulations and administrative procedures relating to safeguard measures notified to the Committee by Canada (G/SG/N/1/CAN/1).

1. Critical circumstances/perishable agricultural products. Determinations apparently are made by the Minister of Finance under section 59 of the Customs Tariff, as amended. How is it determined when an action is to be taken? For example, is a request filed with the Minister, is a request included in a petition filed with the CITT and then forwarded to the Minister by the CITT, etc? Is any advance notice provided that the taking of a provisional measure is being considered? What is the standard used? How is the term "perishable agricultural product" defined? Is there a requirement for a written report describing the action taken and the basis therefor?

2. Quantitative restrictions. Article 5 sets out certain rules applicable in the case of safeguard measures in the form of quantitative restrictions, for example, that no quantitative restriction shall reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available. Does Canada have legislation that implements these rules.

3. Digressivity. Does Canadian law contain a requirement implementing Article 7.4 of the Agreement providing for progressive liberalization of safeguard measures of more than 1 year's duration?

4. Standards for decision. Please explain the relationship between the following four standards found in Canadian law pertaining to determinations in safeguard investigations and imposition of safeguard measures:

- Section 27(1) of the CITT Act provides that the Tribunal shall determine whether subject goods "are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof ... etc." (emphasis added)

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- Section 59.1(1) of the Customs Tariff provides that the Governor in Council may impose a surtax if it appears to his or her satisfaction that goods "are being imported into Canada under such conditions as to cause or threaten serious injury ... etc." This makes no mention of increased quantities or principal cause.
- Section 59.1(5) provides that where a surtax is imposed based on a report from the Minister of Finance, the order ceases to have effect in 200 days, unless the CITT reports that the goods "are being imported into Canada from the country named in the report under such conditions as to cause or threaten serious injury". Again, no mention of increased quantities or principal cause.
- Section 5(3) of the Export and Import Permits Act provides that the Governor in Council may include a good on the Import Control List if he or she is satisfied that goods "are being imported or are likely to be imported into Canada at such prices, in such quantities and under such conditions as to cause or threaten serious injury ... etc.". This also makes no mention of increased quantities or principal cause, and adds in the phrase "are likely to be imported".