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CANADIAN ACT RESPECTING THE IMPOSITION OF ANTI-DUMPING DUTY

The Permanent Mission of Canada has transmitted to the secretariat the following text of the Act respecting the Imposition of Anti-Dumping Duty, passed by Parliament on 17 December 1968 and given Royal assent on 18 December.

AN ACT RESPECTING THE IMPOSITION OF ANTI-DUMPING DUTY

Her Majesty, by and with the advice
and consent of the Senate and House of
Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the Anti-dumping Act.

INTERPRETATION

2. (1) In this Act,

- (a) "country of export" in the case of any goods means the country in which, for the purpose of determining the normal value of the goods, the place described in paragraph (d) of subsection (1) of section 9 is located;
- (b) "Deputy Minister" means the Deputy Minister of National Revenue for Customs and Excise;
- (c) "dumped" has the meaning given to that expression by section 8;
- (d) "duty" means anti-dumping duty imposed under this Act;
- (e) "entry" means entry for consumption within the meaning of the Customs Act;
- (f) "export price" has the meaning given to that expression by section 10;
- (g) "like goods" in relation to any goods means
 - (i) goods that are identical in all respects to the said goods, or
 - (ii) in the absence of any goods described in subparagraph (i), goods the characteristics of which closely resemble those of the said goods;

- (h) "Minister" means the Minister of National Revenue;
 - (i) "normal value" has the meaning given to that expression by section 9;
 - (j) "persons" include partnerships and associations;
 - (k) "prescribed", in the case of a form, means prescribed by order of the Minister;
 - (l) "provisional duty" means duty imposed under subsection (1) of section 15;
 - (m) "sale" includes agreement to sell; and
 - (n) "Tribunal" means the Anti-dumping Tribunal established by section 21.
- (2) For purposes of this Act,
- (a) "associated persons" or persons associated with each other are persons not dealing with each other at arm's length within the meaning of subsection (5) of section 139 of the Income Tax Act; and
 - (b) the date of entry of any goods shall be deemed to be the date on which
 - (i) entry of the goods has been perfected for purposes of the Customs Act,
 - (ii) entry of the goods has been perfected for purposes of this Act, or
 - (iii) the goods have been released from Customs possession,whichever is the latest.
- (3) For greater certainty this Act shall be considered, for the purposes of the Customs Act, to be a law relating to the Customs.

PART I

LIABILITY FOR ANTI-DUMPING DUTY

3. There shall be levied, collected and paid upon all dumped goods entered into Canada in respect of which the Tribunal has made an order or finding, before the entry of the goods, that the dumping of goods of the same description
- (a) has caused, is causing or is likely to cause material injury to the production in Canada of like goods, or

(b) has materially retarded or is materially retarding the establishment of the production in Canada of like goods,

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

4. There shall be levied, collected and paid upon all dumped goods entered into Canada

(a) in respect of which the Tribunal has made an order or finding, after the entry of the goods, that the dumping of the goods or of goods of the same description

(i) has caused material injury to the production in Canada of like goods, or

(ii) would have caused material injury to such production except for the fact that provisional duty was applied in respect of the goods; and

(b) that were entered provisionally into Canada during the period commencing on the day that the Deputy Minister made a preliminary determination of dumping in respect of the goods or of goods of the same description and ending on the day the order or finding referred to in paragraph (a) was made by the Tribunal,

an anti-dumping duty in an amount equal to the margin of dumping of the entered goods but not exceeding the provisional duty, if any, payable in respect of the goods.

5. There shall be levied, collected and paid upon all dumped goods entered into Canada

(a) in respect of which the Tribunal has made an order or finding, after the entry 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 to the production in Canada of like goods or would have caused material injury to such production 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 such dumping would cause material injury to the production in Canada of like goods, and

(ii) material injury has been caused to the production in Canada of like goods by reason of the fact that the entered goods constitute a massive importation or form part of a series of importations into Canada of dumped goods that in the aggregate are massive and that have occurred within a relatively short period of time, and in order to prevent the recurrence of such material injury, it appears necessary to the Tribunal that duty be assessed on the entered goods, and

(b) that were entered into Canada during the period commencing ninety days before the Deputy Minister made a preliminary determination of dumping in respect of the goods or goods of the same description and ending on the day that the preliminary determination was made,

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

6. The importer of any goods in respect of which duty is payable pursuant to section 3, 4 or 5 shall, on demand of the Deputy Minister, pay or cause to be paid all duties imposed by this Act upon the goods entered into Canada.

7. (1) The Governor in Council may exempt any goods or classes of goods from the application of this Act.

(2) Every order made under this section shall be published in the Canada Gazette.

8. For the purposes of this Act,

(a) goods are dumped if the normal value of the goods exceeds the export price of the goods: and

(b) the margin of dumping of any goods is the amount by which the normal value of the goods exceeds the export price of the goods.

9. (1) Subject to subsection (5), the normal value of any goods is the price of like goods when sold by the exporter

(a) to purchasers with whom, at the time of the sale of the like goods, the exporter is not associated,

(b) in the ordinary course of trade for home consumption under competitive conditions,

(c) during such period, in relation to the time of the sale of the goods to the importer in Canada, as may be prescribed by the regulations, and

(d) 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,

as adjusted by allowances calculated in the manner prescribed by the regulations to reflect the differences in the terms and conditions of sale, in taxation and other differences relating to price comparability between the sale of the goods to the importer in Canada and the sales by the exporter of the like goods but with no other allowances affecting price comparability whatever.

(2) In the application of subsection (1) in the case of any goods

(a) if there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made by the exporter at the place described in paragraph (d) of subsection (1) as to permit a proper comparison with the sale of the goods to the importer in Canada, there shall be substituted for that place the place located nearest thereto at which like goods were sold by the exporter; and

(b) if there was not a sufficient number of sales of like goods made by the exporter by reason of the fact that the exporter sold goods solely or primarily for export, but there were sales of like goods for home consumption in the country of export by other vendors, there shall be substituted for the exporter such one of any such vendors as the Deputy Minister may specify.

(3) In determining the normal value of any goods under subsection (1), the price of like goods when sold by the exporter to purchasers during the period referred to in paragraph (c) of subsection (1) shall be

(a) the price at which the preponderance of sales of like goods that comply with all the terms and conditions that are referred to in subsection (1) or that are applicable by virtue of subsection (2) was made by the exporter to purchasers throughout the period; and

(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 are so sold by the exporter to purchasers throughout the period.

(4) Where goods imported into Canada and goods sold for home consumption are like goods except only that the goods sold for home consumption 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 home consumption, the goods imported and the goods sold for home consumption shall be deemed to be like goods for the purposes of this section if, in the opinion of the Minister,

(a) the goods are being imported into Canada without that trade mark applied to them in order to avoid the operation of subsection (1), 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.

(5) Where the normal value of any goods cannot be determined under subsection (1) by reason that there was not a sufficient number of sales of like goods that comply with all the terms and conditions that are referred to in that subsection or that are applicable by virtue of subsection (2), 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 (c) of subsection (1) 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, as adjusted by allowances calculated in the manner prescribed by the regulations to reflect the differences in the terms and conditions of sale, in taxation and other differences relating to price comparability between the sale of the goods to the importer in Canada and the sales of the like goods by the exporter to importers in any country other than Canada but with no other allowances affecting price comparability whatever; or

(b) the aggregate of

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

(ii) an amount for administrative, selling and all other costs and for profits,

calculated in such manner as may be prescribed by the regulations.

(6) In subsections (2) and (5) the expression "sufficient number of sales" with reference to any goods has the meaning given to that expression by the regulations.

(7) Notwithstanding subsections (1) and (5), the normal value of any goods that are shipped directly to Canada from a country where, in the opinion of the Minister,

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

(b) domestic prices are substantially determined by the government of that country,

shall be determined in such manner as the Minister prescribes.

10. (1) Subject to this section, the export price of any goods, 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, or
- (b) the importer's purchase price for the goods,

adjusted in the manner prescribed by the regulations to exclude all charges thereon resulting from or arising after their shipment from the place described in paragraph (d) of subsection (1) of section 9 or, where applicable, the place substituted therefor in determining normal value by virtue of paragraph (a) of subsection (2) of section 9.

(2) Where, in respect of any imported goods,

(a) there is no exporter's sale price or importer's purchase price at the time of importation of the goods, or

(b) the Deputy Minister is of the opinion that the export price, as determined under subsection (1), 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 or producer, the vendor, the exporter, the importer and any other party, that directly or indirectly affects or relates to

(A) the price of the goods,

(B) the sale of the goods,

(C) the net return to the exporter, vendor, manufacturer or producer of the goods, or

(D) the net cost to the importer of the goods,

the export price of the goods shall be deemed to be

(c) if the goods were sold by the importer in the condition in which they were imported to a person with whom, at the time of the said sale, he was not associated, the price for which the goods were so sold less an allowance calculated in the manner prescribed by the regulations

(i) for costs, including the duties imposed under the Customs Tariff and taxes, incurred on or after the importation of the goods and their sale by the importer,

- (ii) for profits on the sale of the goods to that person, and
 - (iii) for all charges on the goods resulting from or arising after their shipment from the place described in paragraph (d) of subsection (1) of section 9, or
 - (d) in any case other than that described in paragraph (c), the price determined in the manner prescribed by the regulations.
- (3) In the case of any goods referred to in paragraph (a) of subsection (2), notwithstanding any other provision of this Act, no entry of such goods shall be considered, for the purposes of this Act, to be perfected until
- (a) the importer, exporter or owner, or his agent or consignee, has delivered to the Deputy Minister such documents and information including statements showing the terms and conditions on which the goods have been sold or accounted for or disposed of in Canada as the Deputy Minister requests in order to determine the export price of the goods, and the export price is determined pursuant to paragraph (c) of subsection (2); or
 - (b) the export price is determined pursuant to paragraph (d) of subsection (2) or pursuant to section 11.
- (4) For greater certainty, any agreement pursuant to which the manufacturer or producer, the vendor or the exporter of any goods undertakes directly or indirectly, or in any manner whatsoever, to indemnify, pay on behalf of or reimburse the importer of the goods for all or any part of the dumping duty that may be levied upon the entry of the goods, shall be deemed to be a compensatory arrangement affecting the price of the goods within the meaning of paragraph (b) of subsection (2).
11. 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 under section 9 or 10, the normal value or export price, as the case may be, shall be determined in such manner as the Minister prescribes.
12. (1) Goods bona fide exported to Canada from any country but passing in transit through another shall, upon such terms and conditions as to shipment, documentation, warehousing, trans-shipment or the like as may be prescribed by the regulations, have the normal value determined as if they were shipped directly to Canada from such first mentioned country.
- (2) In the case of any imported goods that
- (a) were 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 section 9 that is less than the normal value would be if the country of export were the country of origin,

the normal value of the goods, notwithstanding any other provision of this Act, shall, upon such terms and conditions as to shipment, documentation, warehousing, trans-shipment or the like as may be prescribed by the regulations, have the normal value determined as if they were shipped directly to Canada from such first mentioned country.

PART II

PROCEDURE

13. (1) The Deputy Minister shall forthwith cause an investigation to be initiated respecting the dumping of any goods, on his own initiative or on receipt of a complaint in writing by or on behalf of producers in Canada of like goods, if

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

(b) either

(i) he is of the opinion that there is evidence, or

(ii) the Tribunal advises that it is of the opinion that there is evidence,

that the dumping referred to in paragraph (a) has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods.

(2) Where, after receipt of a written complaint respecting the dumping of any goods, the Deputy Minister decides not to initiate an investigation, he shall send a written notice of his decision to the complainant setting out therein the reasons for such decision.

(3) Where the Deputy Minister, after receipt of a written complaint respecting the dumping of any goods, decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury or retardation within the meaning of paragraph (b) of subsection (1),

(a) the Deputy Minister, or

(b) the complainant, within such period from the date of the notice referred to in subsection (2) as is prescribed by the regulations,

may refer to the Tribunal the question whether there is any evidence that the dumping of the goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods.

(4) The Deputy Minister shall, upon receipt of a notice in writing from the Tribunal pursuant to subsection (2) of section 16, cause an investigation to be initiated respecting the dumping of any goods described in the notice.

(5) Where the Deputy Minister causes an investigation to be initiated respecting the dumping of any goods, he shall cause notice of the investigation

(a) to be given to the importer, the exporter, the government of the country of export, the complainant, if any, and such other persons as may be specified by the regulations, and

(b) to be published in the Canada Gazette.

(6) The Deputy Minister shall cause an investigation respecting the dumping of any goods to be terminated and shall not make any preliminary determination of dumping in respect of such goods,

(a) where he is satisfied that

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

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

(b) subject to subsection (7), where, in the case of an investigation initiated by him under subsection (1) without the advice of the Tribunal, he comes to the conclusion that there is no evidence that the dumping of goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods;

and shall thereupon cause notice of such termination to be given to the persons and in the manner provided in subsection (5).

(7) Where, in the case of an investigation described in paragraph (b) of subsection (6), the Deputy Minister comes to the conclusion that there is no evidence of material injury or retardation within the meaning of that paragraph,

(a) he shall cause notice thereof to be given to the persons and in the manner provided in subsection (5); and

(b) he or the complainant, if any, may, within such period from the date of the notice described in paragraph (a) as is prescribed by the regulations, refer to the Tribunal the question whether there is any evidence that the dumping of the said goods has caused, is causing or is

likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods;

and where a reference has been made to the Tribunal under paragraph (b), the Deputy Minister may not terminate the investigation by reason only that in his opinion there is no evidence of material injury or retardation within the meaning of that paragraph unless the Tribunal advises that in its opinion there is no evidence of such material injury or retardation.

(8) When a reference has been made to the Tribunal pursuant to subsection (3) or (7) on the question whether there is any evidence that the dumping of goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods, the Tribunal shall render its advice on the question as soon as possible, without holding any hearings thereon, on the basis of such information and advice as is then available to it.

14. (1) Where an investigation respecting the dumping of any goods has not been terminated under subsection (6) of section 13 and the Deputy Minister, as a result of the investigation, is satisfied that

(a) the goods have been or are being dumped, and

(b) the margin of dumping of the dumped goods and the actual or potential volume thereof is not negligible,

he shall make a preliminary determination of dumping specifying the goods or description of goods to which such determination applies.

(2) When the Deputy Minister has made a preliminary determination of dumping in respect of any goods or description of goods, he shall

(a) cause notice of the determination to be given to the importer, the exporter, the government of the country of export, the complainant, if any, and such other persons as may be specified by the regulations, stating the reasons for such determination;

(b) cause notice of the determination to be published in the Canada Gazette;

(c) cause to be filed with the Secretary of the Tribunal notice in writing 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; and

(d) in accordance with directions given by the Minister, take such proceedings as may be necessary in order to make a final determination of dumping, in accordance with subsection (1) of section 17, within three months from the date of the preliminary determination.

15. (1) Where the Deputy Minister has made a preliminary determination of dumping in respect of any goods or description of goods, the goods or any goods of the same description that are entered into Canada during the period commencing on the day the preliminary determination was made and ending on the day that an order or finding is made by the Tribunal with respect thereto are deemed, for all purposes of this Act, to be entered provisionally, and the importer of any goods so entered during such period shall

(a) pay or cause to be paid, on demand of the Deputy Minister, provisional duty in an amount not greater than the margin of dumping of the said goods; or

(b) post security, on demand of the Deputy Minister, in a prescribed form and in an amount or to a value not greater than the margin of dumping of the said goods.

(2) Any provisional duty or security paid or posted by or on behalf of an importer in respect of the entry of any goods pursuant to subsection (1) shall, except to the extent of the duty payable in respect of the goods, be returned to the importer forthwith following the final determination made by the Deputy Minister under section 17, in respect of the goods.

16. (1) The Tribunal, forthwith upon receipt by the Secretary under subsection (2) of section 14 of a notice of a preliminary determination of dumping, shall, in respect of the goods to which the preliminary determination of dumping applies, make inquiry as to whether

(a) the dumping of the goods that are the subject of the inquiry

(i) has caused, is causing or is likely to cause material injury to the production in Canada of like goods,

(ii) has materially retarded or is materially retarding the establishment of the production in Canada of like goods, or

(iii) would have caused material injury to the production in Canada of like goods except for the fact that provisional duty was applied in respect of the goods; or

(b) in the case of any goods to which the preliminary determination of dumping applies,

(i) either

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused material injury to the production in Canada of like goods or would have caused material injury to such production 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 such dumping would cause material injury to the production in Canada of like goods, and

(ii) material injury has been caused to the production in Canada of like goods by reason of the fact that the entered goods constitute a massive importation or form part of a series of importations into Canada of dumped goods that in the aggregate are massive and that have occurred within a relatively short period of time, and in order to prevent the recurrence of such material injury, it appears necessary to the Tribunal that duty be assessed on the entered goods.

(2) Where, during an inquiry described in subsection (1) respecting any goods to which a preliminary determination of dumping applies, the Tribunal comes to the conclusion that

(a) there is evidence that goods the characteristics of which closely resemble the goods to which the preliminary determination applies have been or are being dumped, and

(b) the dumping referred to in paragraph (a) has caused, is causing or is likely to cause material injury to the production in Canada of like goods or has materially retarded or is materially retarding the establishment of the production in Canada of like goods,

the Tribunal, by notice in writing setting out the description of such goods, may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping of such goods.

(3) The Tribunal shall, within a period of three months from the date of receipt of a notice of a preliminary determination of dumping, in the case of any goods to which the preliminary determination applies, make such order or finding as the nature of the matter may require, and shall declare to what goods or description of goods including, where applicable, from what supplier and from what country of export, the order or finding applies.

(4) The Tribunal, in considering any question relating to the production in Canada of any goods or the establishment in Canada of such production, shall take fully into account the provisions of paragraph (a) of Article 4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade signed at Geneva, Switzerland, on 30 June 1967.

(5) The Secretary shall forward by registered mail a copy of each order or finding to the Deputy Minister, the importer, the exporter and such other persons as may be specified by the rules of the Tribunal.

17. (1) The Deputy Minister, upon receipt of an order or finding of the Tribunal, shall make a final determination of dumping in the case of any goods described in the said order or finding that were entered into Canada before the order or finding of the Tribunal,

(a) by determining whether the goods are goods described in the order or finding of the Tribunal, and

(b) by appraising the normal value and export price of the goods,

and subject to subsection (4) of section 18 and subsection (1) of section 19, such decision is final and conclusive.

(2) The Deputy Minister shall make his final determination on the basis of such facts and information as are available to him, and upon the making of such determination shall thereupon cause an assessment to be made of the duty payable in respect of any goods affected thereby.

(3) The Deputy Minister shall give notice of his final determination in the manner prescribed by the regulations and shall cause notice thereof to be published in the Canada Gazette.

18. (1) Subject to this Act, where, subsequent to an order or finding of the Tribunal, any goods are entered into Canada,

(a) a determination as to whether the entered goods are goods of the same description as the goods or description of goods to which the order or finding applies, and

(b) an appraisal of the normal value and export price of the entered goods,

made upon the entry is final and conclusive unless the importer, within ninety days from the making thereof, makes a written request in a prescribed form and in a manner prescribed by the regulations to a Dominion Customs Appraiser for a re-determination or a re-appraisal.

(2) A Dominion Customs Appraiser may re-determine any determination of the description or re-appraise any appraisal of the normal value or export price of any goods made pursuant to subsection (1),

(a) in accordance with a request made pursuant to subsection (1); or

(b) in any other case, where he deems it advisable within two years of the date of entry of the goods.

(3) Subject to subsection (4), a decision of a Dominion Customs Appraiser under this section is final and conclusive unless the importer, within ninety days of the date of the decision, makes a written request in a prescribed form and in a manner prescribed by the regulations to the Deputy Minister for a re-determination or a re-appraisal.

(4) The Deputy Minister may re-determine any determination of the description or re-appraise any appraisal of the normal value or export price of any goods

(a) in accordance with a request made pursuant to subsection (3);

(b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in entering the goods;

(c) at any time, for the purpose of giving effect to a decision of the Tariff Board, the Exchequer Court of Canada or the Supreme Court of Canada with respect to those goods; and

(d) in any other case, where he deems it advisable within two years of the date of the entry of those goods.

(5) Where, in accordance with this section, a re-determination as to whether any goods are goods as described in paragraph (a) of subsection (1) or a re-appraisal of the normal value or export price of the goods has been made,

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

(b) a refund shall be made of the whole or a part of any duty paid in respect of the goods,

in accordance with the re-determination or re-appraisal.

19. (1) A person who deems himself aggrieved by a decision of the Deputy Minister made pursuant to subsection (1) of section 17 or subsection (4) of section 18 with respect to any goods may appeal from the decision to the Tariff Board by filing a notice of appeal in writing with the Deputy Minister and the Secretary of the Tariff Board within sixty days from the day on which the decision 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 Tariff Board may be heard on the appeal.

(3) On any appeal under subsection (1) the Tariff Board 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 Tariff Board is final and conclusive subject to further appeal as provided in section 20.

20. (1) Any of the parties to an appeal under section 19, namely,
- (a) the person who appealed,
 - (b) the Deputy Minister, or
 - (c) any person who entered an appearance in accordance with subsection (2) of section 19, if he has a substantial interest in the appeal and has obtained leave from the Court or a judge thereof,

may, within sixty days from the making of an order or finding under subsection (3) of section 19, appeal therefrom to the Exchequer Court of Canada upon any question of law.

(2) The Exchequer Court of Canada 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 Tariff Board was taken; or
- (b) refer the matter back to the Tariff Board for rehearing.

(3) The provisions of section 45 of the Customs Act apply mutatis mutandis to any appeal taken under this section as if it were an appeal taken under section 45 of that Act.

PART III

ANTI-DUMPING TRIBUNAL

21. (1) There shall be a tribunal to be called the Anti-dumping Tribunal, consisting of not more than five members to be appointed by the Governor in Council.

(2) Subject to subsections (3) and (4), each member shall hold office during good behaviour for a period of seven years, but may be removed at any time by the Governor in Council for cause.

(3) The first five members appointed after the coming into force of this Act may be appointed to hold office for a term of less than seven years.

(4) Any member is eligible to be reappointed to hold office during good behaviour for any term of seven years or less, and every member ceases to hold office upon attaining the age of seventy years.

(5) The Governor in Council shall designate one of the members to be Chairman of the Tribunal and one of the members to be Vice-Chairman of the Tribunal.

(6) In the event of the absence or incapacity of any member, the Governor in Council may appoint a temporary substitute member upon such terms and conditions as the Governor in Council may prescribe.

(7) Each member shall devote the whole of his time to the performance of his duties under this Act and shall not accept or hold any office or employment inconsistent with his duties and functions under this Act.

22. Each member of the Tribunal shall be paid such remuneration for his services as is fixed by the Governor in Council and is entitled to be paid reasonable travelling and living allowances incurred by him while absent from Ottawa in the course of his duties under this Act.

23. (1) The Chairman is the chief executive officer of the Tribunal and has supervision over and direction of the work of the Tribunal including

(a) the apportionment of the work among the members thereof and the assignment of members to sit at hearings of the Tribunal and to preside thereat, and

(b) generally, the conduct of the work of the Tribunal, the management of its internal affairs and the duties of the staff of the Tribunal.

(2) If the Chairman is absent or if the office is vacant, the Vice-Chairman has and may exercise all the powers and functions of the Chairman.

(3) The Tribunal may authorize one or more of its members to act as Chairman for the time being in the event that the offices of the Chairman and Vice-Chairman are vacant.

24. (1) The head office of the Tribunal shall be at Ottawa.

(2) The Tribunal may sit at such times and places as it considers necessary or desirable for the proper conduct of its business.

25. (1) The Tribunal may, subject to the approval of the Governor in Council, make rules respecting

(a) the sittings of the Tribunal; and

(b) the procedure for making representations to the Tribunal and generally the manner of conducting any business before the Tribunal.

(2) Copies of all rules made pursuant to subsection (1) shall be laid before Parliament within fifteen days after the commencement of the session next ensuing after the making thereof.

26. (1) There shall be a Secretary of the Tribunal who shall be appointed by the Governor in Council to hold office during pleasure.

(2) The Governor in Council may, upon the request of the Tribunal, provide the Tribunal with the services of such officers and employees employed by or in any agency or department of the Government of Canada as are necessary for the proper conduct of the business of the Tribunal, and the Tribunal may obtain the advice and assistance of any agency or department of the Government of Canada.

(3) For the purposes of the Public Service Superannuation Act, the members and Secretary of the Tribunal shall be deemed to be persons employed in the Public Service.

(4) The Tribunal may, with the approval of the Treasury Board, appoint and fix the remuneration of persons having technical or special knowledge to assist the Tribunal in any matter in an advisory capacity.

27. (1) The Tribunal is a court of record and shall have an official seal, which shall be judicially noticed.

(2) The Tribunal has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry upon and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

(3) The Tribunal, for the purposes of section 170 of the Customs Act, shall be deemed to be a court of justice.

28. (1) The Chairman of the Tribunal may direct that evidence relating to any hearing before the Tribunal be received, in whole or in part, by a member of the Tribunal and that member has and may exercise all of the powers of the Tribunal in relation to such hearing.

(2) A member by whom evidence relating to any hearing has been received pursuant to subsection (1) shall make a report thereon to the Tribunal and a copy of the report shall be provided to each of the parties to the hearing.

(3) After receiving any report made under subsection (2) and after holding a rehearing, in whole or in part, of the matter if in its discretion the Tribunal deems it advisable to do so, the Tribunal may make its order or finding.

29. (1) All parties to a hearing before the Tribunal may appear in person or may be represented at the hearing by counsel or an agent.

(2) A hearing before the Tribunal may at the discretion of the Tribunal or the Chairman, as the case may be, be heard in camera or in public.

(3) Where evidence or information that is in its nature confidential, relating to the business or affairs of any person, firm or corporation, is given or elicited in the course of any hearing before the Tribunal, the evidence or information shall not be made public in such a manner as to be available for the use of any business competitor or rival of the person, firm or corporation.

30. (1) Subject to section 31, every order or finding of the Tribunal is final and conclusive.

(2) The Exchequer Court of Canada has exclusive original jurisdiction to hear and determine every application for a writ of certiorari, prohibition or mandamus or for an injunction in relation to any order or finding of the Tribunal or any proceedings before the Tribunal.

(3) An order or finding of the Tribunal is not subject to review or to be restrained, removed or set aside by certiorari, prohibition, mandamus or injunction or any other process or proceeding in the Exchequer Court on the ground

(a) that a question of law or fact was erroneously decided by the Tribunal; or

(b) that the Tribunal had no jurisdiction to entertain the proceedings in which the order or finding was made or to make the order or finding.

31. The Tribunal may, at any time after the date of any order or finding made by it, review, rescind, change, alter or vary the said order or finding or may rehear any matter before deciding it.

32. The Tribunal shall, within three months of the termination of each year, transmit to the Minister of Finance a statement relating to the activities of the Tribunal for that year and the Minister shall cause such statement to be laid before Parliament within fifteen days after the receipt thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

PART IV

GENERAL

33. (1) The true amount of duty or provisional duty payable to Her Majesty on any goods entered into Canada from and after the time such duty should have been paid or accounted for constitutes a debt due and payable to Her Majesty by the importer of the goods and such debt may be recovered at any time with full costs of suit in any court of competent jurisdiction, and any goods thereafter imported by the said importer are subject to a lien for such debt and may be withheld from delivery by Customs until such debt is paid.

(2) Notwithstanding anything in this Act, if any duty imposed in respect of dumped goods has not been paid by the owner of the goods or the importer thereof within thirty days after demand therefor pursuant to this Act, the Minister may, on demand, require any person to whom, after entry of the goods, the goods were sold, to pay an amount in respect of the said duty not exceeding the margin of dumping of the goods sold to such person, which amount shall constitute a debt due and payable to Her Majesty by such person and may be recovered at any time with full costs of suit in any court of competent jurisdiction, without prejudice to any recourse available to Her Majesty under subsection (1).

34. (1) Where, in the opinion of the Deputy Minister,

(a) any goods have been or are being dumped, or

(b) the export price of any goods, as determined under subsection (1) of section 10, is unreliable for any one of the reasons specified in paragraph (b) of subsection (2) of section 10,

the Deputy Minister may, at any time, request that on or before such date as he may specify the manufacturer or producer, the vendor, the exporter or the importer of the goods submit to him a statement, attested under oath in prescribed form, containing such information and evidence relating to the normal value and the export price of the goods as may be prescribed by the regulations.

(2) Where, in the case of a request made by the Deputy Minister under subsection (1) to submit a statement with respect to any goods on or before a specified date, the manufacturer or producer, the vendor, the exporter or the importer of the goods refuses or fails to comply with the request, any entry subsequent to the specified date of goods of the same description made or exported by or on behalf of the manufacturer or producer, the vendor, the exporter or the importer shall be deemed not to have been perfected, notwithstanding any other provision of this Act, until

(a) the statement with respect to the goods is submitted to the Deputy Minister and the normal value and the export price of the said goods are determined pursuant to sections 9 and 10, or

(b) the normal value and the export price of the goods are determined pursuant to section 11.

35. (1) The Governor in Council may make regulations

(a) prescribing or providing for anything that, by this Act, is to be prescribed or provided for by the regulations, and

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

(2) No regulation made under this section has effect until it has been published in the Canada Gazette but, when so published, a regulation shall, if it so provides, be effective from or at any time after the making thereof.

PART V

CONSEQUENTIAL AMENDMENTS

36. (1) Subsection (2) of section 35 of the Customs Act is amended by striking out the word "and" at the end of paragraph (b) thereof, by adding the word "and" at the end of paragraph (c) thereof and by adding thereto the following paragraph:

"(d) 'duty' does not include duty or provisional duty imposed under the Anti-dumping Act."

(2) Section 39 of the said Act is repealed.

(3) Subsection (7) of section 40A of the said Act is repealed.

37. (1) Subsections (1) to (9) of section 6 of the Customs Tariff are repealed.

(2) Subsection (3) of section 6A of the said Act is repealed.

(3) Section 7 of the said Act is amended by adding thereto, immediately after subsection (1) thereof, the following subsections:

"(1a) Where at any time it appears to the satisfaction of the Governor in Council, on a report of the Minister of Finance, that goods of any kind, the growth, produce or manufacture of any country, are being imported into Canada under such conditions as to cause or threaten serious injury to Canadian producers of like or directly competitive products, any goods of the same kind and the growth, produce or manufacture of that country may, by order of the Governor in Council, when imported into such region or part of Canada and during such period after the making of the order as the order may specify, in addition to the duties otherwise established, be made subject to a surtax at such rate, not exceeding the rate that in the opinion of the Governor in Council is sufficient to prevent further such injury or the threat of such injury, as is specified in the order.

(1b) Every order made under subsection (1a) shall be published in the Canada Gazette.

(1c) When any order is made under subsection (1a), the order shall cease to have any force or effect with respect to any period following the 180th day from the date of its making or, if Parliament is not then in session, the 15th day after the commencement of the next ensuing session, unless before that day the order is approved by Parliament."

38. (1) Subsection (8) of section 3 of the Tariff Board Act is repealed and the following substituted therefor:

"(8) With respect to an appeal to the Board pursuant to any Act other than this Act three or more members have and may exercise and perform all the powers and functions of the Board."

(2) Section 9 of the said Act is repealed and the following substituted therefor:

"9. The Board shall cause its decisions in any case brought before it pursuant to any Act other than this Act to be published forthwith in the Canada Gazette."

PART VI

COMING INTO FORCE

39. This Act shall come into force on a day to be fixed by proclamation.

EXPLANATORY NOTES

Clause 36:

(1) This amendment would make it clear that the valuation provisions set out in sections 35 to 41A of the Customs Act do not apply in determining normal value for purposes of the Anti-dumping Act.

(2) Section 39 reads as follows:

"39. (1) Where the Minister is satisfied that material injury has been or may be caused to any industry in Canada, or any portion thereof, by reason of the importation of any new or unused goods or class of such goods at a value for duty less than the cost of production thereof, plus a reasonable amount for gross profit, he may so report to the Governor in Council, and, notwithstanding anything in this Act, the Governor in Council may order that the value for duty of those goods or that class of goods shall be increased to an amount equal to the cost of production thereof plus a reasonable amount for gross profit, having regard to the gross profit generally earned in that trade in the country of export, to be determined in the manner prescribed in section 37.

(2) The Governor in Council may at any time revoke an order made under subsection (1) and, unless sooner revoked, an order made under subsection (1) expires at the end of one year after the making thereof."

The repeal of section 39 is consequential upon the enactment of the Anti-dumping Act proposed by this Bill.

(3) Subsection (7) of section 40A reads as follows:

"(7) Notwithstanding anything in this Act,

(a) where the market price of any manufactured goods in the country of export has, as the result of the advance of the season or the marketing period, declined to levels that do not reflect in the opinion of the Minister their normal price, the value for duty shall be the amount determined and declared by the Minister to be the average price, weighted as to quantity, at which the like or similar goods were sold for consumption in the country of export during a reasonable period having regard to that trade, immediately preceding the date of shipment of the goods to Canada,

(b) where the market price in the country of export of any fresh fruit or vegetable of a class or kind produced in Canada has, as a result of the advance of the season or the marketing period, declined to levels that do not reflect in the opinion of the Minister their normal price, the value for duty of such fresh fruit or vegetable, when imported into such region or part of Canada and during such period as the Minister may specify, shall be the amount determined and declared by him to be the average value, weighted as to quantity, at which like fresh fruits or vegetables were imported during the three-year period immediately preceding the date of shipment to Canada, and

(c) where at any time it appears to the satisfaction of the Governor in Council on a report from the Minister that goods of any kind not entitled to entry under the British Preferential tariff or any lower tariff are being imported into Canada under such conditions as prejudicially or injuriously to affect the interests of Canadian producers or manufacturers, the Governor in Council may authorize the Minister to determine the value for duty of any class or kind of such goods, imported into such region or part of Canada and during such period as the Minister may specify, or may authorize the Minister to prescribe the manner in which such value for duty shall be determined, and the value so determined shall be deemed to be fair market value of such goods."

This subsection will be replaced by the proposed new subsection (1a) of section 7 of the Customs Tariff as set out in clause 37.

Clause 37:

(1) Subsections (1) to (9) of section 6 of the Customs Tariff read as follows:

"6. (1) In the case of goods exported to Canada of a class or kind made or produced in Canada, if the export or actual selling price to an importer in Canada is less than the fair market value or the value for

duty of the goods as determined under the provisions of the Customs Act, there shall, in addition to the duties otherwise established, be levied, collected and paid on such goods, on their importation into Canada, a special or dumping duty, equal to the difference between the said selling price of the goods for export and the said value for duty thereof; and such special or dumping duty shall be levied, collected and paid on such goods although not otherwise dutiable.

(2) The special duty imposed by subsection (1) shall in no case exceed fifty per cent ad valorem and the following goods are exempt from such duty:

(a) goods of a class subject to duty under the Excise Act; and

(b) goods or classes of goods declared exempt by any order or regulation made by the Governor in Council.

(3) Duties and taxes imposed in the country of export shall be disregarded in estimating the value for the purpose of the said duty.

(4) In this section "export price" or "selling price" means the exporter's price for the goods, exclusive of all charges thereon after their shipment from the place whence exported direct to Canada.

(5) If at any time it appears to the satisfaction of the Minister that the payment of the special duty by this section provided for is being evaded by the shipment of goods on consignment without sale prior to such shipment, the Minister may in any case or class of cases authorize such action as is deemed necessary to collect on such goods or any of them the same special duty as if the goods had been sold to an importer in Canada prior to their shipment to Canada.

(6) If at any time it appears to the satisfaction of the Minister that any person owning or controlling or interested in a business in Canada and also in any other country, or any person carrying on a business in any other country and owning or controlling or interested in a business operating in Canada, and by reason thereof is enabled to import goods for further manufacture or assembling or for resale, and while complying with the legal requirements on importation disposes of such imported goods, whether in the form as imported or as further processed, assembled or manufactured, at prices below the duty-paid value thereof as entered at Customs plus or including all charges upon the goods after shipment from the place whence exported direct to Canada, including sales, distribution and advertising costs, and plus, if any, the cost of processing, assembling or further manufacturing in Canada, the Minister may declare that goods of such class or kind were and are on importation subject to an additional special or dumping duty not exceeding fifty per cent and authorize such action as is deemed necessary for the collection thereof.

(7) If the full amount of any special duty of Customs as herein provided has not been paid on goods imported, the Customs entry thereof shall be amended and the deficiency paid upon the demand of the Collector.

(8) The Minister may make such regulations as are deemed necessary for carrying out the provisions of this section and for its enforcement.

(9) For the purposes of this section, goods may be deemed to be of a class or kind not made or produced in Canada where similar goods of Canadian production are not offered for sale to the ordinary agencies of wholesale or retail distribution or are not offered to all purchasers on equal terms under like conditions, having regard to the custom and usage of trade."

The repeal of these subsections is consequential upon the enactment of the proposed new Anti-dumping Act which will set out the relevant law respecting the imposition of anti-dumping duties.

(2) Subsection (3) of section 6A reads as follows:

"(3) Notwithstanding anything in this section, where goods that are subject to additional duty under this section are also subject to special or dumping duty under section 6, the amount of the additional duty payable under subsection (1) of this section shall be reduced by the amount of the special or dumping duty payable under section 6."

This amendment is consequential upon the repeal of subsections (1) to (9) of section 6 of the Customs Tariff.

(3) The proposed new subsections to be added to section 7 would authorize the Governor in Council to impose a surtax on imported goods that cause or threaten serious injury to Canadian producers of goods that are like or directly competitive with the imported goods. These new subsections would replace section 40A (7) of the Customs Act and in their application would have substantially the same effect as that subsection. By virtue of the proposed new subsection (1c) an order made under subsection (1a) would automatically cease to have effect 180 days after it was made unless before that date Parliament approved the order.

Clause 38:

(1) Subsection (8) of section 3 of the Tariff Board Act at present reads as follows:

"(8) With respect to an appeal to the Board under the provisions of the Customs Act or Excise Tax Act three or more members have and may exercise and perform all the powers and functions of the Board."

(2) Section 9 of the Tariff Board Act at present reads as follows:

"9. The Board shall cause its decisions in any case brought before it under the Customs Act or Excise Tax Act to be published forthwith in the Canada Gazette."

These amendments are consequential upon section 19 of the proposed new Anti-dumping Act which provides for an appeal from a decision described therein to the Tariff Board.