GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

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LEGISLATION OF CANADA (VAL/1/ADD.17 + SUPPLS.)

COMMENTS AND QUESTIONS OF NORDIC COUNTRIES AND AUSTRALIA, AND RESPONSES OF CANADA

A. Comments and Questions of Nordic Countries

Sub-section 35 (1) - Definition of similar goods

Compared to Article 15.2(b) of the Agreement the Canadian definition does not refer to "the quality of the goods, their reputation and the existence of a trade mark".

Response: The definition conforms to language in Article 15.2(b) of the Agreement. The second sentence under Article 15.2(b) lists a few of the characteristics which "are among the factors to be considered in determining whether goods are similar". This list is not exhaustive and is illustrative. These and other factors are clearly specified in administrative directives and therefore need not be specified in the legislation. Canadian legislation reflects the spirit and intent of Article 15.2(b) of the Agreement.

Sub-section 35 (2) - Goods deemed to be identical or similar

What is the practical meaning of this fairly complicated regulation?

Response: Sub-section 35 (2) gives effect to Article 15.2(e) by providing that goods may be deemed to be identical or similar when produced by a different person when there are no identical or similar goods produced by the same person.

Sub-section 35 (3) (c) - Related persons

In comparison to Article 15.4(a) of the Agreement this regulation raises the question whether the Canadian legislation adds something to the contents of Article 15.4(a) of the Agreement.

Response: This sub-section provides a precise definition of "businesses" which exist under the Canadian legal system and adds nothing to the intent of Article 15.4(a).

Sub-section 35 (3) (h and i) - Related persons

The question arises whether these two cases cover more than Article 15.4(d) of the Agreement, which reads "any person directly or indirectly owns, holds or controls 5 per cent or more of the outstanding voting stock or shares of both of them".

Response: Sub-section 35 (3) (h) covers the intent of Article 15.4(d) which defines a related person as one who owns or holds 5 per cent or more of the outstanding voting stock or shares of another enterprise. Sub-section 35 (3) (i) goes further only in that it defines the specific case where a person wholly owns or controls one enterprise and holds or owns 5 per cent or more of the outstanding voting stock or shares of another enterprise. Sub-section 35 (3) (h) and 35 (3) (i) provide a legal definition for common ownership within the Canadian context.

Sub-section 37 (5) (b) (ii) (A) - Items not to be included in the Customs Value

Compared to the text in Note to Article 1 "Price actually paid or payable" the addition of the word "reasonable" in the Canadian legislation may have an unfavourable effect on the deductible items in question.

Response: The use of the word "reasonable" in Sub-section 37 (5) (b) (ii) (A) qualifies costs, charges or expenses which may be deducted from the price paid for goods. While "reasonable" could be interpreted in a subjective manner, assessment of the reasonable nature of costs for construction, erection, assembly, maintenance or technical assistance would be made by comparing the charges for similar activities within the Canadian context. To the extent possible, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. As pointed out in note to Article 5 of the Agreement, accepted industry formulae, recipes, methods of construction, and other industry practices would form the basis of the calculations.

Sub-section 37 (5) (c) - Some unacceptable discounts

Does this mean a discount that has been agreed upon before importation but takes effect only after it?

Response: Sub-section 37 (5) (c) allows discounts agreed upon before importation but taking effect after delivery when such discounts are earned prior to or at the time of importation. Discounts which are not earned prior to or at the time of importation would not be allowed. For example, discounts agreed to on future volumes or transfers for future considerations to lower the unit price retroactively would be disallowed. These discounts would not be considered in determining the customs value.

Sub-section 38 (3) (a) - Transaction value of identical goods - Adjustments

An adjustment is provided for in respect of royalties and licence fees when determining the transaction value of identical goods. Such an adjustment is not required in Article 2 and Note to Article 2 of the Agreement.

Response: Sub-section 38 (3) (a) refers to the costs of transportation and handling identified in Sub-section 37 (5) (a) (vi) and not to royalties and licence fees as implied by the question. We believe that Sub-section reference was mistakenly transposed from 37 (5) (a) (vi) to read 37 (5) (a) (iv). Please note that Sub-section 38 (3) (a) reflects the provisions contained in Article 2.2.

Sub-section 39 (2) - Transaction value of similar goods - Adjustments

The same applies to this passage as to identical goods above. Article 3 and Note to Article 3 do not provide for an adjustment in respect of royalties and licence fees.

Response: We have the same comment as above in reference to the question on Sub-section 39 (2).

Section 42 - Residual Method - Methods prohibited

The list of the methods prohibited, Article 7.2 of the Agreement, is not included in this law.

Response: Section 42 of the Customs Act stipulates that where the value for duty is not appraised under Sections 37 to 41, it shall be appraised on the basis of a value resulting from a flexible application of one of the methods of valuation set out in those sections and on information available in Canada. The Canadian legislation is drafted in such a way that no other method may be employed to establish the value for duty. The prohibited valuation methods listed in Article 7.2 of the Agreement are not included in the legislation, as the use of methods not specified in the Act would not be possible. Furthermore, the specific prohibitions found in Article 7.2 are delineated in published documents explaining administrative policies.

Sections 51 and 100 (1) - Invoice

Detailed regulations concerning the documentation to be delivered at entry are contained in Memorandum D1-4-1, dated 1 January 1985. According to this memorandum either a commercial invoice or a Customs invoice is to accompany fully completed entries. However, our exporters claim that the Canadians continue to insist on Customs invoices being annexed to entry documentation. The Finnish Foreign Trade Association assumes that information about the new regulations has certainly not reached all circles involved.

Concerning the data to be included in the invoices, the biggest problems are caused by the requirement in field 2, i.e. the date of direct shipment to Canada.

The problems connected to data in field 20, "Originator", were eliminated through the amendment on 5 July 1985 which was received with pleasure by our exporters.

Response: Memorandum D1-4-1 (invoice requirements of Canada Customs in support of fully completed entries) contains Canada Customs invoice policy. This policy provides several means, including the use of a Canada Customs invoice, for the importer to meet Canadian invoice requirements. In instances where the Canada Customs invoice is used, the exporter, importer or their agents are allowed to prepare this invoice. This policy is intended to provide flexibility for the importer to meet Canadian customs requirements. It must be noted that there is no customs requirement that the exporter complete a Canada Customs invoice. In certain instances, the Canadian importer may request a foreign exporter to complete a customs invoice on a courtesy basis. The responsibility to meet

Canadian customs requirements rests fully, however, with the Canadian importer. This policy has been widely circulated within the Canadian import community since July 1984.

Field 2 of the Canada Customs invoice requires the declaration of the date on which goods begin their continuous journey to Canada. This date is required to administer our application of Article 8.2 whereby each party to the Agreement may make separate provisions of the treatment of transportation costs. For this reason this date is considered essential in applying the Canadian legislative provisions for transportation costs.

B. Question of Australia

Could Canada indicate where the prohibition on certain valuation methods contained in Article 7.2 is reflected in the Customs and Customs Tariff Act? Section 42 of the Act would appear to contain the provisions intended to cover the requirements of Article 7 of the Code on Customs Valuation but it is not specific.

Response: Section 42 of the Customs Act stipulates that where the value for duty is not appraised under Sections 37 to 41, it shall be appraised on the basis of a value resulting from a flexible application of one of the methods of valuation set out in those sections and on information available in Canada. The Canadian legislation is drafted in such a way that no other method may be employed to establish the value for duty. The prohibited valuation methods listed in Article 7.2 of the Agreement are not included in the legislation, as the use of methods not specified in the Act would not be possible. Furthermore, the specific prohibitions found in Article 7.2 are delineated in published documents explaining administrative policies.