

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CANADIAN ANTI-DUMPING REGULATIONS - AMENDMENT

The permanent mission of Canada has transmitted to the secretariat the following text relating to an amendment of the Anti-Dumping Regulations.

ANTI-DUMPING REGULATIONS, AMENDMENT

P.C. 1972-1305 8 June 1972

His Excellency the Governor General in Council, on the recommendation of the acting Minister of Finance, is pleased hereby,

- (1) pursuant to section 7 of the Anti-dumping Act to revoke the following:
 - (a) the Pharmaceutical Products Anti-dumping Duty Exemption Order, 1969,
 - (b) the Automobiles Anti-dumping Duty Exemption Order, 1969,
 - (c) the Specified Commercial Vehicles Anti-dumping Duty Exemption Order, 1969, and
 - (d) Goods dutiable under the Excise Act Anti-dumping Duty Exemption Order, 1969, made by Order in Council P.C. 1968-2350 of 31 December 1968; and
- (2) pursuant to sections 7 and 35 of the Anti-dumping Act to amend the Anti-dumping Regulations, made by Order in Council P.C. 1968-2349 of 31 December, 1968, as amended, in accordance with the Schedule hereto.

SCHEDULE

1. All that portion of section 3 of the Anti-dumping Regulations preceding paragraph (a) thereof is revoked and the following substituted therefor:

"Normal Value and Export Price

3. Subject to sections 9 and 10, the sales of like goods, the prices of which are used to compute the normal value of any goods, shall be those sales of goods that"

2. All that portion of subsection 4(1) of the said Regulations preceding paragraph (b) thereof is revoked and the following substituted therefor:

"4. (1) The normal value of any goods, as otherwise determined, may be adjusted by the deduction of an allowance on account of any quantity discount granted by the exporter in connexion with the goods purchased by the importer equal to the amount of the discount granted if

- (a) the discount is not greater in percentage and not more favourable in terms than that granted generally by the exporter on the sales of like goods that are used in determining the normal value of the goods; or"

3. Sections 6, 7 and 8 of the said Regulations are revoked and the following substituted therefor:

"6. The normal value of any goods, as otherwise determined, may be adjusted by the deduction of an allowance on account of any deferred discount granted by the exporter in connexion with the goods purchased by the importer equal to the amount of the discount granted if

- (a) the discount is not greater in percentage and not more favourable in terms than that granted generally by the exporter on the sales of like goods that are used in determining the normal value of the goods; and
- (b) the importer has provided the Deputy Minister with an undertaking that he will comply with any terms and conditions relating to that discount.

7. The normal value of any goods, as otherwise determined, may be adjusted by the deduction of an allowance on account of a discount for cash granted by the exporter in connexion with the goods purchased by the importer equal to the amount of the discount granted if

- (a) the discount is not greater in percentage and not more favourable in terms than that granted generally by the exporter on the sales of like goods that are used in determining the normal value of the goods; and
- (b) the Deputy Minister is satisfied that the importer has earned or will earn the discount in accordance with the terms and conditions relating thereto.

8. The normal value of any goods, as otherwise determined, may be adjusted by the deduction of an allowance on account of the cost of freight from the place of shipment to purchasers for home consumption if the like goods are sold generally for home consumption by the exporter in the country of export at a common delivered price

- (a) to all destinations in that country, or

- (b) in that zone in that country in which the place of direct shipment to Canada is located, and that under ordinary commercial practice of the country of export is considered to be a common transportation zone,

which allowance shall be an amount equal to the lesser of

- (c) the average cost of freight incurred by the exporter on the sales of like goods in the country of export or zone therein; and
(d) the actual cost of freight incurred on shipping the goods to the importer."

4. Section 10 of the said Regulations is revoked and the following substituted therefor:

"10. In the event that there was not, in the opinion of the Deputy Minister, such a number of sales of like goods made to purchasers for home consumption in the country of export who are at the same or substantially the same trade level as the importer of the goods as to permit a proper comparison with the sale of the goods to the importer in Canada but there was such a number of sales of like goods made to purchasers for home consumption at the trade level nearest and subsequent to that of the importer, the latter sales shall be used to compute the normal value of the goods sold to an importer in Canada and the normal value of such goods may be adjusted by the deduction of

- (a) an allowance not exceeding the discount that is generally granted on sales made by other vendors in the country of export of like goods to purchasers for home consumption who were at the same trade level as the importer; or
(b) in the absence of the information referred to in paragraph (a), an allowance not exceeding such amount as in the opinion of the Deputy Minister represents the cost incurred by the exporter in respect of sales for home consumption for carrying out each sales function normally performed at the trade level of the importer if
(i) the exporter did not perform those functions on sales to the Canadian importer,
(ii) the exporter did not carry out those functions in respect of the goods in Canada, and
(iii) the allowance for the cost of each function does not exceed an amount equal to the actual cost of carrying out each such function by the importer in Canada."

5. Section 12 of the said Regulations is revoked and the following substituted therefor:

"12. (1) All calculations made under the Act and these Regulations shall be made at the exchange rate prevailing on the date of sale.

(2) Where sufficient information has not been furnished or is not available at the time the goods have been released from Customs possession or entered for warehouse, whichever is the earlier, to enable the calculation under subsection (1) to be made on the basis of the date of sale, the date of shipment to Canada shall, for the purpose of subsection (1), be used in place of the date of sale."

6. Section 16 of the said Regulations is revoked and the following substituted therefor:

"16. For the purpose of determining the normal value of any goods under paragraph 9(5)(b) of the Act,

- (a) the cost of production of the goods shall include all costs that, in accordance with good business principles and practices, are attributable or in any manner related to the production or manufacture by the producer of those goods and of all like goods,
- (b) the amount for profits on the sale of the goods shall be an amount equal to
 - (i) if in the opinion of the Deputy Minister there was such a number of sales of like goods made by the producer in the country of export for home consumption at a profit as to permit a proper comparison, the weighted average profit made on such sales,
 - (ii) where sub-paragraph (i) is not applicable but there was in the opinion of the Deputy Minister such a number of sales of like goods made by other vendors in the country of export for home consumption at a profit as to permit a proper comparison, the weighted average profit made on such sales, or
 - (iii) where sub-paragraphs (i) and (ii) are not applicable but there was in the opinion of the Deputy Minister such a number of sales of goods of the same general category as the said goods made by the producer in the country of export for home consumption at a profit as to permit a proper comparison, the weighted average profit made on such sales, or
 - (iv) where sub-paragraphs (i), (ii) and (iii) are not applicable but there was in the opinion of the Deputy Minister such a number of sales of goods of the same general category as the said goods

made by other producers in the country of export for home consumption at a profit as to permit a proper comparison, the weighted average profit made on such sales, and

- (c) the amount for administrative, selling and all other costs shall be an amount equal to the weighted average of such costs incurred on the sales of the goods that were used for the purpose of calculating the amount for profits pursuant to paragraph (b).

and for the purposes of this section, sections 3 to 12 and section 14 apply "mutatis mutandis."

7. Section 19 of the said Regulations is amended by adding thereto the following subsection:

"(2) For the purposes of paragraph 10(2)(d) of the Act, the export price of any goods imported to be assembled, packaged or further manufactured in Canada or to be entered into the course of manufacture or production in Canada shall be the price of the goods into which the imported goods are so assembled, packaged, produced or further manufactured when sold between persons who are not associated at the time of the sale, less an amount equal to the aggregate of

- (a) the profit incurred on the sale of the said goods into which the imported goods were assembled, packaged, produced or further manufactured;
- (b) the administrative, selling and all other costs incurred in selling the goods described in paragraph (a);
- (c) the costs that are attributable or in any manner related to the assembly, packaging, production or further manufacture in Canada of the goods described in paragraph (a);
- (d) the costs, charges and expenses incurred in preparing the imported goods for shipment to Canada that are additional to those costs, charges and expenses generally incurred on sales for home consumption; and
- (e) all other costs, charges and expenses, including Canadian customs duties and taxes, if applicable, resulting from or arising from the exportation, or after the shipment of the goods from
- (i) the place described in paragraph 9(1)(d) of the Act, or
- (ii) the place substituted therefor in determining the normal value by virtue of paragraph 9(2)(a) of the Act,
as the case may be."

8. The said Regulations are further amended by adding thereto the following heading and sections:

"Exemptions

23. (1) Pharmaceutical products of a kind not made or produced in Canada and imported on or after 1 May 1972 are hereby declared exempt from the application of the Anti-dumping Act.
- (2) In this section, "pharmaceutical products" means any material, substance, mixture, compound or preparation, of whatever composition or in whatever form, including materials for use exclusively in the manufacture thereof, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in humans or animals, or for restoring, correcting or modifying organic functions in humans or animals, but does not include cosmetics as defined in the Excise Tax Act, and confectionery products.
- (3) For the purposes of this section, pharmaceutical products shall be deemed to be of a kind not made or produced in Canada where goods of that kind made or produced in Canada 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, and shall not be deemed to be of a kind made or produced in Canada unless a quantity sufficient to supply 10 per cent of the normal Canadian consumption of such article is so made or produced.
24. Goods of a class subject to duty under the Excise Act imported on or after 1 May 1972 are hereby declared exempt from the application of the anti-dumping Act."