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REPLIES BY BRAZIL TO QUESTIONS PUT BY CANADA ON THE BRAZILIAN ANTI-DUMPING REGULATIONS

Reproduced herewith are replies by Brazil to questions^{1/} by Canada in document ADP/W/170 on Customs Policy Resolution No. 00-1227.^{1/}

- 1) The resolution contains no reference to time-limits for the various stages of the investigative process undertaken by the Customs Policy Commission (CPA). How would such an investigation be structured under the regulation?

Indeed neither the Anti-Dumping nor the Subsidies and Countervailing Measures Codes establish any particular obligation on this regard. Therefore, Brazilian authorities have preferred, at this stage, not to go beyond what was established by those codes; resolution CPA, 1227 does not contain time-limits for the different stages of the investigative process.

- 2) Article 14 requires that respondents to dumping or subsidy investigations reply to questionnaires within 40 days. Can the response period be extended under certain circumstances, for example, when a case proves complex, and if so, under which provisions?

^{1/} Document ADP/1/Add.26/Suppl.1 and Corr.1.

The answer is affirmative. Article 51 of CPA's resolution establishes that the time limits may be exceptionally extended, on the basis of a specific CPA decision thereto. The same article states that in the case referred to in article 29 such an exception to the time-limit rule will not be accepted. Article 29 deals with time limits for provisional measures which can not be modified.

- 3) Article 20 reads that "in case the petitioner requests the termination of a proceeding, the Customs Policy Commission may use its own discretion to terminate or continue the investigation". Under what circumstances would the Customs Policy Commission decide not to accept the petitioner's request to terminate the proceedings?

Article 5, paragraph 1 of the Anti-Dumping Code and article 2, paragraph 1 of the Subsidies Code establish that in special circumstances, the investigating authorities may initiate an investigation without having received a specific request to this end. Similarly, CPA considers it reasonable that it may proceed with the investigation when the petitioner has submitted a termination request, if it has sufficient evidence to consider that there was dumping or subsidy and injury, as well as a causal link between them.

- 4) Article 37 reads that "the decisions of the Customs Policy Commission on the imposition of an anti-dumping or countervailing duty ...shall be reviewed entirely or partially solely after a period of 1 (one) year and provided that "new fact" justifies reinitiation of the investigation". Some signatories have included a "sunset" clause in their review provisions such that anti-dumping or countervailing measures are automatically rescinded if no review has been undertaken after a number of years. Is it the intention of the Brazilian authorities to employ a similar approach?

Yes, based on what is established in article 48 in the sense that no review related to an anti-dumping or countervailing measure previously adopted shall be in force for more than 5 years.

- 5) Do importers or other interested parties have a right of appeal under other provisions of Brazilian law with respect to decisions taken by the Customs Policy Commission regarding the imposition of anti-dumping or countervailing measures?

Under article 52 of CPA resolution 1227, no consideration shall be granted, at the administrative level, to requests for reviewing decisions taken by CPA. However, the Brazilian judiciary system does not prevent any interested party to have recourse to court in order to make sure that rights not granted at the administrative level shall be honoured by the law.