COMMENT AND ANALYSIS

RECENT CANADIAN EXPERIENCE WITH COUNTERVAILING DUTIES: THE CASE OF AGRICULTURE

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The Canadian experience with countervailing duty laws has been relatively s ort. We certainly have not had the experience that the United States has had since 1979. It is only sinc. the enactment of the *Special Import Measures Act* (*SIMA*)[1] in 1984 that there has been in Canada a privately-initiated, complex administrative system for determining countervailing duty complaints. In total, there have only been six countervailing duty cases since *SIMA* came into force in December 1984. Four of those cases were investigated in 1986 and the numbers appear to be increasing every year.

There are two trends emerging in Canadian countervailing duty cases. The majority of cases brought in 1986, three out of four, involved agricultural products from the European Economic Community (EEC) and the United States.[2] The other cases involved manufactured products such as carbon steel pipe and polyphase induction motors from newly industrializing countries such as Brazil, Taiwan and Mexico. A significant reason for the recent increase in countervailing duty actions involving agricultural products is the agricultural trade war between the United States and the EEC. In response to the world glut and falling prices for agricultural products, many countries have responded with new or improved assistance programs to cushion their domestic agricultural producers from the effects of the world supply and demand imbalance. However, such domestic subsidization programs have resulted in overproduction and diversion of subsidized products into foreign markets, depressed world prices and injury to agricultural producers in foreign markets. These were some of th allegations in the recent Canadian cases involving imports of boneless manufacturing beef from the EEC (*EEC Beef*) and grain corn from the United States (*U.S. Corn*).

Another significant reason for the increase in the number of countervailing duty cases in Canada in the last few years relates to the significant procedural changes that came into effect with the enactment of *SIMA*. Before *SIMA*, the Countervailing Duty Regu'ations under the *Customs Tariff*[3] provided for an investigatory process which was subject entirely to Cabinet discretion. Canada did not have a complex quasi-judicial, administrative system for adjudicating countervailing duty actions. With the enactment of *SIMA*, Canada adopted a two-track, privately-initiated, quasi-judicial, time-limited system for investigating antidumping and countervailing duty complaints. As in the United States, the Canadian system was designed with a distinct procedural bias in favour of domestic complainants.

Procedures

There are two agencies in Canada which are responsible for investigating and determining the issues in a countervailing duty case: the Department of Revenue, Customs and Excise (Revenue) and the Canadian Import Tribunal (CIT). Under *SIMA*, the Deputy Minister of Revenue may commence an investigation on his own initiative or on the basis of a written complaint properly documented by persons representing a major proportion of the industry in Canada or, in some cases, where a notice is received from the CIT. Where the Deputy Minister is satisfied that there is evidence that the imported goods have been subsidized and that there is a reasonable indication that the subsidization of the goods has caused, is causing, or is likely to cause material injury, or has caused or is causing retardation of the establishment, in Canada of production of like goods, he is required to launch an investigation.[4] It is Revenue's practice to issue written reasons for its decision to initiate an investigation. After launching an investigation, Revenue will send out questionnaires to all known importers concerning their imports of the goods under investigation. In most cases, Revenue officials will contact the foreign exporters of the subject goods and attend at their premises to verify the information provided in the importers' questionnaires.

Once an investigation has been commenced, the Deputy Minister must make a preliminary determination within 90 days.[5] This time may be extended, as it was in *U.S. Corn* to 135 days where the issues involved are complex or novel.[6] Revenue will examine the issue of whether the imported goods are subsidized, calculate the amount of the subsidy on the subject goods and determine whether there is a reasonable indication that the subsidized goods are causing material injury to an industry in Canada. Up to 30 days after receipt of notice of an investigation, an interested party (ie., an exporter, an importer, the government of the country of export or the complainant) may refer the question of reasonable indication of injury to the CIT.[7] If the preliminary determination by Revenue is affirmative, provisional duties in the estimated amount of the subsidy may be imposed on all like products entering the country between the date of the preliminary determination and the final order of the CIT.[8]

As soon as a preliminary determination is made, the matter must be referred by the Deputy Minister to the CIT which then conducts an inquiry into the question of whether the subsidized goods have caused, are causing, or are likely to cause, material injury, or have caused, or are causing, retardation of the establishment in Canada of production of like goods. The CIT must conduct its inquiry and issue a finding within 120 days from the date of the preliminary determination.[9] During the course of the CIT's inquiry, the Deputy Minister of Revenue must, within 90 days of the date of the preliminary determination, make a final determination on the question of subsidy. In his final determination, the Deputy Minister must determine whether the imported goods have been or are being subsidized, whether the amount of the subsidy on the goods or the actual or potential volume of the subsidized goods is negligible and the amount of the subsidy on such goods.[10]

The CIT is required to examine two major issues in its inquiry. First, it must determine whether there has been, is, or will likely be in future, material injury to the production in Canada of like goods. In its inquiry into material injury, the CIT may examine the volume of subsidized imports, the effect of the imported goods on prices of like goods in the domestic market and the consequent impact of the imported goods on domestic production of like goods. In its examination, the CIT may consider whether there has been significant price undercutting by the subsidized imports; whether the effect of the imports has been to depress prices to a significant degree or to prevent price increases which otherwise would have occurred; whether there has been actual or potential decline in output, sales, market share, growth, productivity, return on investment or utilization of capacity; other factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, profits, ability to raise capital or investments and, in the case of agriculture, whether there has

been an increased burden on government support programs.[11] Also, the CIT must determine whether the subsidization of the imported goods is the cause of material injury to the production in Canada of like goods. Causality between the injury to the domestic production in Canada of like goods and the subsidization of the imported goods must be established.

Generally speaking, the CIT relies on the domestic complainants, importers, exporters, the government of the country of export, and other interested persons to make representations with respect to the issues of material injury and causality. It conducts public hearings at which evidence is presented and interested parties have an opportunity for cross-examinination. The CIT has the power to compel the attendance of witnesses and the proceedings before it, although informal, have many of the trappings of a court.

Issues

(a) Standing

The first important question that Canadian producers have in contemplating initiation of a countervailing duty action is, who may bring a countervailing duty complaint? In legal terminology, this is the issue of standing. The Canadian law is considerably more ambiguous on this point than the U.S. law. *SIMA* speaks only of the Deputy Minister receiving "a written complaint respecting...the subsidizing of goods".[12] Although there are no specific provisions in *SIMA* indicating who may make a written complaint, the CIT in its decision in *EEC Beef* stated that common sense dictated the acceptance of the principle that, as in an antidumping case, "a major proportion of an industry has standing to make a case for material injury".[13] In practical terms, this means that persons or associations representing a major proportion of the production in Canada of like goods may bring a countervailing duty complaint.

In *U.S. Corn*[14] and *EEC Pasta*,[15] the issue of standing was not a problem. In *U.S. Corn*, the complainants were the Ontario Corn Producers Association, the Manitoba Corn Growers Association and an association of Québec feed grain producers. All three associations represented producers of the same product as the imported product under investigation. In *EEC Pasta*, the complainant was the Canadian Pasta Manufacturers Association, an association composed of five major producers, four of whom represented an estimated 95 per cent of Canadian production.

In the third significant case in 1986, *EEC Beef*,[16] the question of standing was critical. In that case, the respondents, the CBF Irish Livestock and Meat Board and Ronald A. Chisholm Limited, alleged that the complainant, the Canadian Cattlemen's Association (CCA), did not have standing to bring the action because the CCA did not represent producers of "like goods". The imported product under investigation was boneless, manufacturing beef which consisted of frozen quarters of beef packaged in boxes. The complainant, CCA, is an association of cow-calf producers and feed lot operators who produce live cows for sale to slaughterers, boners, processors and packers. These latter operations are not integrated in Canada.

The CIT found in *EEC Beef* that the CCA represented a majority of producers of like goods in Canada. The CIT reasoned that the production process for the product consists of a single, continuous line of production starting with a raw material (the cow) which yields only one, commercially significant end-product, namely, boneless manufacturing beef.[17] In the U.S. cases involving imports of Canadian swine and pork products (*Swine and Pork*) and Canadian Atlantic groundfish

(*Groundfish*), the International Trade Commission found, to the contrary, that the producers of live swine and the pork processors and packers, and the producers of whole fish and the processors and packers of fish fillets, respectively, were distinct and different industries and that the products were not "like goods". The U.S. test, as enunciated in *Swine and Pork*, requires that the raw product enter into a single line of production resulting in the processed product and that there be a substantial degree of economic integration between the producers of the raw product and the processors, with an emphasis on the close economic and legal relationship between the producers and the processors.[18]

In *EEC Beef*, the CIT chose to ignore the second part of the U.S. test and stated that it is essential only to prove that the raw material entered into a single, continuous line of production resulting in the end product to establish standing in Canada. The CIT was persuaded that in cases involving agricultural products, to hold otherwise would mean that no one would have standing to bring an action to protect Canadian primary agricultural producers. The question of who has standing to bring a petition in a countervailing duty case in the United States involving agricultural products has not been finally resolved. There have been decisions contrary to *Swine and Pork* and *Groundfish*. As well, there have been Congressional proposals to override the ITC decisions in *Swine and Pork* and *Groundfish*.

(b) Subsidy

The second important issue in a countervailing duty case is the question of what constitutes a countervailable, or actionable, subsidy.

In *SIMA*, "subsidy" is defined as:

> ...any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods, as a result of any scheme, program, practice or thing done, provided or implemented by the government of a country other than Canada....[19]

To be a countervailable subsidy, a program need not provide a benefit directly in respect of the production or manufacture of the imported goods, but need only provide a benefit to a person engaged in one of the above activities related to the imported goods.

In *U.S. Corn*, out of a total of 64 federal programs and 20 state programs that were investigated, only 4 federal programs were found to confer countervailable subsidies. The four countervailable programs were the Great Plains Conservation Program, the Storage Facilities Equipment Loan Program, the Feed Grain Program and the Reserve Storage Payment Program. In *U.S. Corn*, Revenue established the following criteria for determining whether a government program confers a countervailable subsidy:

(1) whether the program provides a financial or other commercial benefit, and
(2) whether the program is targeted.[20]

Revenue has adopted the principle, accepted internationally, that "generally available" government programs are not countervailable whereas government programs "targeted" at a specific enterprise or industry are countervailable. In the United States, this is known as the "specificity test". In *U.S. Corn*, Revenue established the following criteria for determining which programs are "generally available":

(1) programs which are available to all persons in an industrial sector, such as agriculture;
(2) programs which are available to similar persons across a range of industrial sectors, such as small business programs;
(3) programs which are available to more than one industrial sector; and
(4) programs which are generally available within the jurisdiction of the granting authority, whether it is a province or a country.[21]

In the latter case, a provincial program which is available across a range of industrial sectors or to all persons in an industrial sector throughout a province is generally available. However, a federal program which is targeted to specific regions within Canada, such as a regional development program, is countervailable. Generally speaking, if a program is available only to certain enterprises or access to the program is limited in some way, either by specifically including or excluding certain enterprises or regions, then the program may be "targeted" depending upon the eligibility conditions or criteria for the program. In determining whether a program is regionally targeted within a particular jurisdiction, Revenue will consider reasons why the program is directed only at certain segments within that jurisdiction. If the program is directed at a certain region because that region is the only one that could reasonably benefit from the program or because that region possesses certain characteristics that are unique, then the program may not be considered to be targeted.

Although on first analysis, the definition of "subsidy" in *SIMA* is extremely broad and includes a commercial benefit to a person engaged at any stage in the production, processing, distribution, transportation or sale of imported goods, Revenue appears, in the first cases which it has examined, to be interpreting countervailable subsidy in a narrower manner than the recent interpretations by the U.S. Department of Commerce (DOC) in the administrative review in *Carbon Black from Mexico* and the preliminary determination in *Softwood Lumber from Canada* in 1986.

It is interesting to compare and contrast the criteria established by Revenue in *U.S. Corn* from recent determinations by the DOC. In its 1983 final determination in *Softwood Products from Canada*, the DOC found that Canadian federal and provincial stumpage programs did not confer countervailable subsidies because the programs were not targeted to "a specific enterprise or industry, or group of enterprises or industries". The DOC found that stumpage programs were available in Canada on similar terms regardless of the industry or enterprise of the recipient, that there was no governmental targeting to limit use to a specific industry and that stumpage was widely used by more than one group of industries.[22] In its 1986 preliminary determination in *Softwood Lumber from Canada*, however, the DOC found that stumpage programs were available to a smaller group of industries than it had found previously and that particular recipients were targeted by the exercise of provincial government discretion in allocating timber licenses and establishing stumpage rates. In that determination, the DOC found that the industries benefiting from stumpage programs were limited to the lumber and pulp and paper industries which were in fact one integrated industry.[23]

In *Swine and Pork,* decided in 1985, the DOC found that government programs available in fact to all agricultural producers across the whole range of agricultural products were not "specific", or in Canadian terms were not "targeted", and therefore were not countervailable.[24] In that case, the *Canada Agricultural Products Standards Act* was deemed not to provide countervailable subsidies because numerous agricultural products were graded under that *Act.* On the other hand, payments made under the federal *Agriculture Stabilization Act* were found to be countervailable because that *Act* and Regulations specifically listed certain products eligible for price support payments. In *Groundfish,* however, the DOC refused to apply the same reasoning as it did in *Swine and Pork* to consider the saltwater fishing and seafood products industries as a broad group of industries like agriculture.[25] Thus, government programs directed at the saltwater fishing and seafood products industries were

deemed to be "specific" and therefore countervailable.

Of particular concern to Canada is the DOC's interpretation that government programs available in certain regions of a province or a country are "specific" and therefore countervailable. Under this reasoning, the DOC has held that provincial government programs available throughout a province were not countervailable, but programs such as B.C.'s Low-Interest Loan Assistance program, which was available formerly in all parts of British Columbia except the Lower Mainland, were countervailable. Similarly, federal government programs designed to provide opportunities in economically-depressed regions of the country have been found to be countervailable.

In *EEC Pasta*, the programs investigated and found to be subsidies were programs which provided export refunds on wheat and eggs exported in the form of pasta.[26] The programs investigated provided benefits to the producers of primary agricultural products: durum wheat and eggs. These programs would be identified as "upstream subsidies" in U.S. law. *SIMA* contains some unique provisions concerning export subsidies, that is, benefits contingent upon export performance or benefits which operate and are intended to stimulate export sales. The Deputy Minister of Revenue in making a final determination of subsidization, is directed under *SIMA* to exclude in his calculation of the amount of subsidy any export subsidy provided by a country that is not inconsistent with that country's obligations under the *General Agreement on Tariffs and Trade (GATT).*[27] The 1979 *Subsidies and Countervailing Duties Code* (the *Code*) provides in Article 9 that signatories shall not grant export subsidies on products other than certain primary products. With respect to primary products, the signatories agreed not to grant directly or indirectly any export subsidy in a manner which results in the subsidizing country having a more than equitable share of world export trade in an agricultural product. Signatories also agreed not to grant export subsidies on exports of certain primary products to a particular market in a manner which results in prices materially below those of other suppliers to the same market. Although the question was not discussed in its reasons in *EEC Pasta*, Revenue must have concluded that the export subsidies under investigation in that case were inconsistent with the provisions of the *GATT* and the *Code*.

(c) Injury

The third important issue in a countervailing duty case is the issue of material injury to the production in Canada of like goods. Significant considerations in cases involving agricultural products are: (i) who comprises the industry in Canada involved in the production of like goods and (ii) what are like goods?

These issues were critical in *EEC Beef*. In that case, the CIT found that the subsidized imports had not caused and were not causing material injury to Canadian cow/calf producers and feed lot operators. It found, however, that there was a likelihood of material injury on the basis that there was a significant and growing surplus of beef in the EEC and that, without import restrictions, it was likely that EEC exports to Canada would resume in substantial volumes. A surge in imports of EEC beef into Canada, the CIT reasoned, would likely result in a diversion of Canadian live cows and beef into the U.S. market. The U.S. National Cattlemen's Association and certain Congressmen had threatened to bring retaliatory action against Canada if, in the words of the some Congressmen, Canada continued to act as a "back door" for the EEC. On the basis of this evidence, the CIT found likelihood of material injury from the threat of U.S. retaliatory action.[28]

The CIT also found material injury in *U.S. Corn*. In a 2-1 split decision, the CIT found past, present and likelihood of future material injury to Canadian corn producers from U.S. agricultural programs, principally the U.S. Feed Grain Program, which have resulted in over-production and high

inventories of grain corn in the United States. In that case, the CIT looked to price as the only indicia of injury as the volume of subsidized imports from the U.S. had been declining since 1981. It heard evidence that the Canadian price for corn generally follows the U.S. price as set by the Chicago Board of Trade. The CIT found that there had been significant decline in the average farm price of corn in the U.S. Midwest which had caused Canadian prices to decline below the cost of production. The dramatic decline in the Canadian price for corn, the CIT determined, was of a magnitude that indicated material injury to Canadian corn producers. As the U.S. Feed Grain Program had already resulted in depressed market prices in Canada below the cost of production and would inevitably result in increased federal and provincial stabilization payments for Canadian corn producers, the CIT concluded that there has been, is, and will likely be in future, material injury to Canadian producers of grain corn from the subsidization of U.S. corn.[29]

In *EEC Pasta*, the CIT found unanimously that there was no material injury to Canadian pasta production from the subsidized imports. The CIT based its decision on its analysis that the markets for European pasta and Canadian pasta were different and that the products do not compete with each other. The market for Canadian pasta consists largely of large retail chain grocery stores whereas the market for European pasta consists of large independent grocery outlets in the Metropolitan Toronto and Montreal areas. European pasta is sold in different sized packages and at significantly higher prices than Canadian pasta in the large independent grocery outlets in Metropolitan Toronto and Montreal. The CIT found that consumers of European pasta are, generally speaking, certain ethnic groups within those Metropolitan areas and that demand is relatively price inelastic. The injury suffered by the Canadian industry was not caused by the subsidized imports, the CIT determined. The price suppression and reduction in profit margins experienced by the Canadian pasta producers was caused largely by intense competition among Canadian producers in their own market and by an increase in the regulated price set for wheat by the Canadian Wheat Board. Because of intense domestic competition, Canadian pasta producers had not been able to pass on the increase in the cost of wheat to their customers. The CIT concluded that the Canadian pasta producers were experiencing intensely competitive conditions within their own market which had caused price suppression and squeezing of profit margins.[30]

Public Interest Hearings

Generally speaking, in the cases to date, the countervailing duties which have been levied have been imposed in the full amount of the subsidy on the imported goods. In the United States, the *Trade Agreements Act* of 1979 provides for a mandatory assessment of a countervailing duty in an amount equal to, and not less than, the amount of the net subsidy on the imported goods.[31] Article VI of the *GATT* and the *Code* provide that no countervailing duty may be levied in excess of the estimated subsidy on the imported goods. The *Code* provides further that the amount of duty imposed should be less than the net subsidy where the injury to the domestic producers is less than the amount of the subsidy.[32]

In Canada, there is a unique section in *SIMA* which provides a procedure whereby an interested person may challenge the imposition of a countervailing duty, or the imposition of a duty in the full amount of the subsidy, as not being in the public interest. Any "interested person" may make a request to the CIT for an opportunity to make representations on the question of whether such a duty is in the public interest.[33] The CIT may hold public hearings on the question after its injury finding has been made. It is required to report its finding on the public interest question to the Minister of Finance. He has the discretion to determine that the imposition of a countervailing duty, or the imposition of a duty in the full amount of the subsidy, is, is not, or might not be, in the public interest.

The public interest provision will be tested for the first time in *U.S. Corn*. The CIT will conduct a public hearing commencing on July 6, 1987, to receive representations from interested persons on the question of whether an imposition of a countervailing duty would, would not, or might not be, in the public interest. In this case, there are a number of groups that have challenged the imposition of a countervailing duty on the basis that it is not in the public interest. The Canadian industry associations arguing against the imposition of countervailing duties include the Industrial Corn Users Group, consisting of the St. Lawrence Starch Company Limited, Casco Company, Nacan Products Limited and King Grain (1985) Limited; the Association of Canadian Distillers; the Canadian Feed Industry Association (Québec and Saskatchewan divisions); the Brewers Association of Canada; the Canadian Pork Council and the Canadian Export Association.

The reaction of Canadian users of grain corn demonstrates the significant interdependency among agricultural producers, and among agricultural producers and their customers within the Canadian economy. As illustrated in *U.S. Corn*, some of the users of grain corn are other producers of primary agricultural products, such as the poultry producers in British Columbia and hog producers in Québec. Seventy-six per cent of the grain corn in Canada is grown in Ontario. Smaller amounts are grown in Manitoba and Québec. The B.C. division of the Canadian Feed Industry Association argued successfully before the CIT that they should be excluded from the imposition of countervailing duties because they do not purchase corn from Ontario farmers and Manitoba growers cannot fulfill their requirements. Québec hog producers expressed concern about obtaining grain corn for feed during the periods of the year when Ontario corn is not available but they were not excluded from the application of the countervailing duty order.

In many ways, the Canadian economy resembles the world economy in that there is significant interdependence among agricultural producers, and among producers of primary agricultural products and their customers. Choices made by governments to assist domestic agricultural producers indirectly or directly with subsidization programs, or to impose countervailing duties, quotas or other restrictions on imports, upset the delicate balance in world agricultural trade and result in increased prices for the consumer. The U.S. Feed Grain Program has been criticized around the world by agricultural producing countries for adding new pressures to an already out-of-balance world agriculture supply and demand equilibrium. The need for new international rules governing subsidies and their discipline through the use of domestic countervailing duty measures is particularly acute in the agricultural area. We can only hope that the multilateral trade negotiations and the Canada-U.S. negotiations will produce new agreements and understandings aimed at rationalizing and improving world agricultural trade.

Notes

1. Stats. Can. 1984, c. 25.

2. Four countervailing duty cases were investigated in Canada in 1986: Boneless Manufacturing Beef Originating in or Exported from the European Economic Community *(EEC Beef)*, Dry Pasta Originating in or Exported from the European Economic Community *(EEC Pasta)*, Grain Corn Originating in or Exported from the United States of America *(U.S. Corn)*, and Carbon Steel Seamless Pipe Originating in or Exported from Brazil.

3. Countervailing Duty Regulations, C.R.C., Vol. V, c. 520, enacted under the *Customs Tariff*, R.S.C. 1970, c. C-41 as amended.

4. *SIMA*, Stats. Can. 1984, c. 25, s. 31.

5. *SIMA*, s. 38.

6. *SIMA*, s. 39.

7. *SIMA*, s. 33(2).

8. *SIMA*, s. 8(1).

9. *SIMA*, ss. 42 and 43.

10. *SIMA*, s. 41(1).

11. Canadian Import Tribunal Rules, S.O.R./85 1068, s. 36.

12. *SIMA*, s. 31(1).

13. CIT-2-86, Statement of Reasons - August 8, 1986, pp. 11-12.

14. Department of National Revenue, Customs and Excise, Prelim. Affirm. - November 7, 1986, Final Affirm. - February 7, 1987; CIT-7-86, Finding - March 6, 1987, Reasons - March 20, 1987.

15. Department of National Revenue, Customs and Excise, Prelim. Affirm. - July 2, 1986, Final Affirm. - December 19, 1986; CIT-5-86, Finding - January 28, 1987, Reasons - February 12, 1987.

16. Department of National Revenue, Customs and Excise, Prelim. Affirm. - March 27, 1986, Final Affirm. - June 12, 1986; CIT-2-86, Finding - July 25, 1986, Reasons - August 8, 1986.

17. CIT-2-86, Finding - July 25, 1986, Reasons - August 8, 1986.

18. *Live Swine and Fresh, Chilled and Frozen Pork Products*, 50 Fed. Reg. 31931 (1985) (ITC, Final Affirm.).

19. *SIMA*, s. 2(1).

20. Department of National Revenue, Customs and Excise, Final Affirm. - February 7, 1987.

21. *Supra*, note 19.

22. *Certain Softwood Products from Canada*, 48 Fed. Reg. 24159 (1983) (DOC, Final Neg.).

23. *Certain Softwood Lumber Products from Canada*, 51 Fed. Reg. 37453 (1986) (DOC, Prelim. Affirm.).

24. *Supra*, note 18.

25. *Certain Fresh Atlantic Groundfish from Canada*, USITC publication #1844, May 1986 (ITC, Final Affirm.).

26. Department of National Revenue, Customs and Excise, Final Affirm. - December 19, 1986.

27. *SIMA*, ss. 38(1)(b)(iii), 41 (1)(a)(iv).

28. CIT-2-86, Reasons - August 8, 1986.

29. CIT-5-86, Reasons - March 20, 1987.

30. CIT-5-86, Reasons - February 12, 1987.

31. Pub. L. 96-39, 93 Stat. 144; 19 U.S.C. ss. 2501 2582.

32. *Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, GATT* (1979), *Basic Instruments and Selected Documents*, 26th Supp., Art. 4, para. 1.

33. *SIMA*, s. 45.

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