

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

Committee on Subsidies and  
Countervailing Measures

## QUESTIONS CONCERNING THE LEGISLATION OF NEW ZEALAND

Following the meeting of the Committee on Subsidies and Countervailing Duties in April 1983 the European Communities would like to draw the attention of the New Zealand Government to the following points in its countervailing legislation which is contained in Section 129 of the Customs Act of 1966 and which raises a number of questions as to its conformity with the GATT and the Code on Subsidies and Countervailing Duties to which New Zealand is a party.

1. This Act permits the imposition of countervailing duties if the importation into New Zealand of any subsidized goods has any effect prejudicial to any industry carried on in New Zealand.

Under the Subsidies Code countervailing duties can only be imposed after it has been established that the imports are causing or threatening to cause material injury to a domestic industry (Article 2 (1) and 6 Subsidies Code). It seems that the standard applicable under New Zealand law is lower than the standard of the Code. In addition, the Act does not define what constitutes an industry and whether such industry must account for at least a major proportion of total domestic output of the products under consideration (Article 6 (5) Subsidies Code).

2. The Customs Act is silent on the questions of definition and calculation of subsidies and it is unclear whether the term "special concession" in Section 129(2c) has a wider meaning than Article 6 III GATT under which no countervailing duty shall be levied in excess of an amount equal to the bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of the product in the country of origin or exportation including any special subsidy to the transportation of a particular product.

3. Section 129 (9) permits the imposition of provisional duties for a period of six months, while under the Subsidies Code the normal period of validity of provisional duties is four months only (Article 5 (3) Subsidies Code).

4. Section 129 (11) is inconsistent with the rules of the Subsidies Code concerning retroactivity. The Code permits retroactive imposition of countervailing duties up to a period of 90 days prior to the imposition of provisional duties only on the condition that very restrictive criteria are met (Article 5 Subsidies Code).

5. Section 129 (12) expressly states that every determination of the Minister made under Section 129 is final. While this provision clearly excludes administrative reviews it is unclear whether it also excludes appeals to New Zealand Courts of Law.

6. Section 129 does not contain any rules on procedure, on whether and how investigations are carried out, on the rights of defense of the parties involved in such proceedings. Moreover, the New Zealand Customs Act does not ensure transparency of the proceedings as it is required by the Code. In fact, under Section 129 nothing but the imposition of definitive countervailing duties must be published.

The points raised above do not necessarily cover all areas where the New Zealand Customs Act may not be in full conformity with New Zealand's international obligations. In general, the Customs Act of 1966, even where it is not in apparent contradiction with the Subsidies Code, does not take account of many of the detailed rules laid down in the Code and thus does not ensure that countervailing procedures are carried out in conformity with the Code. The Community would like to ask the New Zealand Government, therefore, to reconsider its legislation in the light of the Subsidies Code and, where warranted, to bring it in line with its international obligations.