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Committee on Anti-Dumping Practices

RESPONSES TO SUPPLEMENTARY QUESTIONS FROM  
THE UNITED STATES ON NEW ZEALAND'S ANTI-DUMPING LEGISLATION

Revision

The following are responses to supplementary questions posed by the United States and circulated in ADP/W/225.

References to "the Act" in the responses, are to the Dumping and Countervailing Duties Act 1988, which has replaced Part VA of the Customs Act 1966 (ADP/1/Add.15) as the legislation governing anti-dumping and countervailing duty actions. The text of the Act has been circulated in ADP/1/Add.15/Rev.1.

The New Zealand authority responsible for the administration of the Act is the Ministry of Commerce. The Ministry is cognizant of New Zealand's obligations as a signatory to the Anti-Dumping Code, and as a matter of policy applies the Act consistently with those obligations.

It is not the practice of the New Zealand authorities to provide responses of a hypothetical nature in relation to matters which may be the subject of judicial review. This position is reflected in the responses to a number of the questions raised.

Question: Section 3(1)

In its response, New Zealand indicates that the definition of domestic industry would in all cases exclude importers of the allegedly dumped or subsidized goods. How might the New Zealand authorities then deal with a situation in which a firm that accounts for a majority of the domestic production of the like product was also an importer of the like product? What if this firm were the only domestic producer or, alternatively, what if it opposed the filing of a complaint brought by another domestic producer accounting for only a minimal portion of domestic production?

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\*English and Spanish only.

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Response:

Where a firm which accounts for any proportion of domestic production imports the allegedly dumped goods then it will be excluded from the definition of industry for the purposes of the Act. It will not be so excluded if it imports like goods which are not allegedly dumped. Accordingly, a firm will be excluded if it imports the allegedly dumped goods even if it accounts for the majority of domestic production, and even if such a firm opposes the filing of a complaint by a minor producer, but will not be so excluded if the imports of like goods are not allegedly dumped. A firm which is the only domestic producer but is also importing allegedly dumped goods is unlikely to lodge a complaint against itself.

Question: Section 5

Notwithstanding the literal provisions of Article VI:1(a), would the New Zealand authorities concur that it is companies, and not countries, which in fact engage in dumping? If so, the United States again questions why, in the case of an exporter having no home market sales, the sales of other domestic companies in that market would be preferred to the same exporter's sales to third countries as the proper basis for comparison.

Response:

It is because it is companies which engage in dumping, and because there is a strong probability that if an exporter dumps on one export market he will also be dumping on other markets, that New Zealand seeks to establish the normal value on the basis of the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, before proceeding to alternative approaches such as third country sales or constructed values.