

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Subsidies and
Countervailing Measures

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INFORMATION ON INTERPRETATION AND APPLICATION OF THE AGREEMENT

Legislation of New Zealand

The formal authority for the imposition of countervailing and dumping duties in New Zealand is provided by section 129 of the Customs Act 1966. The following comments on a specific provision in this legislation has been made by the representative of New Zealand:

"Section 129 (10) allows the Minister of Customs to impose countervailing duties retrospectively on goods subject to a certain time frame. The New Zealand authorities have noted that the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII (Subsidies Code) in Article 6, paragraph 6, and Article 5, paragraph 9 restricts retrospective action to ninety days, and that Article 5, paragraph 5 also provides that countervailing duty may be levied retroactively for the period for which provisional measures, if any, have been applied. It has therefore been decided that if in the future a decision is taken to apply countervailing duties retrospectively, the provisions of the Code would be applied."

[129. Dumping duty

1. Subject to the provisions of this section, in any of the cases specified in sub-section (2) of this section the Minister may from time to time by notice in the Gazette direct that there shall, in addition to any other duties of customs, be imposed on goods imported into New Zealand a special duty of customs (in this section referred to as a dumping duty), and such duty shall be levied, collected, and paid accordingly.

2. If in the opinion of the Minister the importation into New Zealand from any country (whether or not it is a contracting party to the General Agreement on Tariffs and Trade referred to in the General Agreement on Tariffs and Trade Act 1948) of any goods of a class or kind produced or manufactured or intended to be produced or manufactured in New Zealand, or in any other country which is a contracting party to the General Agreement on Tariffs and Trade, has or is likely to have any effect prejudicial to any industry carried on in New Zealand or in such other country as aforesaid, or to the establishment of any industry in New Zealand or in that other country, a dumping duty may be levied in respect of any such goods imported into New Zealand in any of the following cases, namely:

- (a) if the actual selling price of the goods to any importer is less than their current domestic value determined in accordance with the provisions of this Act;
- (b) if the actual selling price of the goods to any importer is in the opinion of the Minister less than the cost of production, with a reasonable profit added thereto, of similar goods in the country of origin or the country of exportation to New Zealand at the time of such exportation;
- (c) if the Minister is satisfied that, in respect of the goods, any special concession (whether by way of railway or shipping or air freight, subsidy, bounty, rebate, or otherwise) has been or is to be allowed, taken, or granted;
- (d) if the Minister is satisfied that, because of an association in business or a compensatory arrangement between the exporter and the importer or a third party, the goods are being sold on the open market in New Zealand at a loss, or at a profit lower than the profit normally made on sales on the open market of identical or equivalent goods.

3. For the purposes of this section, the Minister may determine the amount of any concession to which paragraph (c) of sub-section (2) of this section relates.

4. The rate or amount of dumping duty levied under this section shall be determined as follows:

- (a) in the case of goods to which paragraph (a) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and their current domestic value;
- (b) in the case of goods to which paragraph (b) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and the cost of production, with a reasonable profit added thereto, of similar goods in the country of origin or the country of exportation to New Zealand at the time of such exportation;
- (c) in the case of goods to which paragraph (c) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the amount of the special concession referred to in that paragraph;
- (d) in the case of goods to which paragraph (d) of sub-section (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the price at which the goods are being sold on the open market in New Zealand and such selling price as the Minister may determine, having regard to the profit margin normally made by an independent seller in New Zealand on sales of identical or equivalent goods to an independent purchaser.

5. For the purposes of paragraphs (a) and (b) of sub-section (2) and paragraphs (a) and (b) of sub-section (4) of this section, the actual selling price of the goods shall be deemed not to exceed the amount payable in accordance with usual commercial practice by the importer or purchaser in respect of those goods, exclusive of any charges that are not taken into account in determining the current domestic value of goods in accordance with this Act. In every such case the amount payable as aforesaid in respect of any goods shall be ascertained as if the parties had agreed that payment for those goods should be made in New Zealand. If in relation to this section any question arises as to whether or not any payment is in accordance with usual commercial practice, it shall be determined by the Minister.

[[5.A. For the purpose of paragraph (d) of sub-section (2) and paragraph (d) of sub-section (4) of this section the goods referred to as being sold on the open market in New Zealand shall include not only such goods sold in the same state as imported, but also any goods sold in New Zealand which use such goods, either in a further form of manufacture, or mixed with, in combination with, or sold in conjunction with any other goods, whether imported or otherwise.]]

6. If at any time it appears to the Minister that the payment of any dumping duty is being evaded or avoided by the importation of any goods otherwise than on sale or in any other manner, he may determine, for the purposes of this section, the actual selling price of the goods, the cost of production, or the current domestic value thereof, and dumping duty may be levied accordingly.

7. For the purposes of this section, two persons shall be deemed to be associated in business with each other if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

8. If in the opinion of the Minister there is reasonable cause to believe that any goods that have been imported into New Zealand are goods in respect of which he may direct the imposition of a dumping duty, he may give a provisional direction that payment of dumping duty in respect of those goods shall be secured, in accordance with Part IX of this Act, in such amount as he may determine.

9. A provisional direction given under sub-section (8) of this section (unless in the meantime it is replaced by a direction given under sub-section (1) of this section) shall cease to have effect at the expiry of the period of three months following the date on which the provisional direction was given, except so far as it is extended by any further direction given by the Minister within that period; but an extended provisional direction shall in any case cease to have effect at the expiry of the period of six months following the date on which the provisional direction was first given.

10. If any provisional direction given under sub-section (8) of this section ceases to have effect, any security given pursuant to the provisional direction shall be released, except to the extent that the duty secured is payable pursuant to a direction given under sub-section (1) of this section.

11. Any direction given under sub-section (1) of this section may, in the discretion of the Minister, require the imposition of dumping duty on goods imported into New Zealand before the date on which the direction is given, except goods imported earlier than four months immediately preceding -

- (a) the date on which the collector has received from any person a written complaint that he has been or will be prejudicially affected by the dumping of any of the goods to which the direction relates; or
- (b) the date of the giving of a provisional direction in respect of the goods under sub-section (8) of this section; or
- (c) the date of the giving of the direction under sub-section (1) of this section -

whichever date is the earliest.

12. Every determination of the Minister made under the authority of this section shall be final.

[[13. Notwithstanding anything in this section, a collector of customs shall have the right to require and take security for the payment of any revenue which may become due under this section and, until the required security is given pursuant to Part IX of this Act, he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the security is required.]]]