

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

Original: English

INFORMATION ON INTERPRETATION AND APPLICATION OF THE AGREEMENT

Legislation of New Zealand

Reproduced herewith is the relevant part of the Customs Acts Amendment (No. 2) 1983, which deals with legislation pertaining to dumping and countervailing duties. The relevant section of the Act, in relation to New Zealand's obligations to the (Subsidies Code) is sections 186(d) and (e), i.e. countervailing duty, and provisional dumping and countervailing duty.

"PART VA

"DUMPING AND COUNTERVAILING DUTIES

"186A. Dumping duty—(1) The Comptroller may initiate an investigation on being satisfied that there is sufficient evidence of the elements of dumping set out in this section.

"(2) Where, pursuant to an investigation under subsection (1) of this section, the Minister forms the opinion that the importation into New Zealand from any country 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, causes or is likely to cause material injury to any industry in New Zealand or in the other country, or materially retards the establishment of any industry in New Zealand or in that other country, 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 any such goods imported into New Zealand a special duty of Customs (in this Act referred to as a dumping duty) and such duty shall be levied, collected, and paid in respect of any such goods in any of the following cases, namely:

"(a) If the export price of the goods to any importer is less than their normal value determined in accordance with section 186B of this Act:

"(b) If the export price of the goods to any importer is, in the opinion of the Minister, less than the cost of production, with an amount for administrative and selling costs, profit, and any charges 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 goods exported to New Zealand have been carried, whether within the country of exportation for the purpose of exporting the goods to New Zealand or from the country of exportation to New Zealand or both, without a charge for freight, or there has been allowed, taken,

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or granted any special concession in freight (whether by way of remission, reduction, rebate, refund, or otherwise):

"(d) If the Minister is satisfied that, because of an association in business or a compensatory agreement between the exporter 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) The rate or amount of dumping duty levied under this section shall be determined as follows:

"(a) In the case of goods to which subsection (2) (a) of this section applies, the dumping duty shall be a rate or amount to be determined by the Minister, not exceeding the difference between the export price of the goods and their normal value:

"(b) In the case of goods to which subsection (2) (b) of this section applies, the dumping duty shall be a rate or amount to be determined by the Minister, not exceeding the difference between the export price of the goods and the cost of production, with a reasonable amount for administrative and selling costs, profit, and any charges added thereto, of similar goods in the country of origin or (as the case may require) the country of exportation to New Zealand at the time of such exportation:

"(c) In the case of goods to which subsection (2) (c) of this section applies, the dumping duty shall be a rate or amount to be determined by the Minister, not exceeding the amount of the reduction, rebate, refund or other allowance in freight referred to in the said subsection (2) (c):

"(d) In the case of goods to which subsection (2) (d) of this section applies, the dumping duty shall be a rate or 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:

"Provided that the amount or rate of dumping duty levied under this section shall not exceed a rate or amount which in the opinion of the Minister is sufficient to remove the material injury referred to in subsection (2) of this section.

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"(4) For the purposes of this Part of this Act, the Minister may determine the rate or amount of the special concession in freight to which subsection (2) (c) of this section relates.

"(5) Where, in relation to the exportation of any consignment of goods to New Zealand, the Minister is considering whether a dumping duty should be imposed under subsection (1) of this section, the Minister may suspend his consideration of that consignment if he is given and accepts an undertaking by the exporter that the exporter will so conduct his future export trade to New Zealand in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to any industry in New Zealand or any other country which is a contracting party to the General Agreement on Tariffs and Trade or to avoid materially retarding the establishment of any industry in New Zealand or in that other country:

"Provided that the Minister may—

"(a) Be given and accept any amendment to an undertaking because of altered circumstances; and

"(b) In the event of an interested party offering satisfactory evidence substantiating the need for a review, or otherwise at the Minister's own initiative, at any time decide that the need for an undertaking no longer exists and that the investigation is accordingly terminated.

"(6) For the purposes of this Part of this Act, 2 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.

"(7) For the purposes of subsections (2) (d) and (3) (d) 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.

"(8) 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 normal value of the goods in accordance with section 186b of this Act, and the export price thereof in accordance with section 186c of this Act, and dumping duty may be levied accordingly.

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"(9) The Minister may, by notice in the *Gazette*, revoke any notice made under the authority of this section, and, upon revocation, dumping duty imposed by that notice shall cease to be payable.

"(10) Any direction given under 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 90 days immediately preceding—

"(a) The date on which the Collector has received from any person a written complaint that he has been or will be materially injured 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 section 186e of this Act; or

"(c) The date of the giving of the direction.

"(11) Every determination of the Minister made under the authority of this section shall be final.

"(12) Subject to the Official Information Act 1982, the Comptroller, upon request, shall afford any interested party to an investigation access to all relevant information and the Comptroller shall take into account any views expressed by any such interested party.

"186b. Normal value—(1) For the purposes of this Part of this Act, the normal value of goods shall, subject to this section, be taken to be the price of like goods when sold by the exporter—

"(a) In the ordinary course of business for home consumption in the country of exportation;

"(b) In the same or substantially the same quantities as the sale of the goods to the importer;

"(c) To purchasers with whom the exporter is not associated, and who are at the same or substantially the same trade level as the importer.—

adjusted to reflect any differences in terms and conditions of sale, in taxation, and in price comparability between the goods sold to the importer and the like goods sold by the exporter.

"(2) In determining the normal value of any goods under this section there shall not be taken into account—

"(a) Any sale of like goods for home consumption by the exporter to a buyer in the country of exportation if the exporter did not, at the same or substantially the same time, sell like goods in the ordinary course of business to other persons in the country of exportation at the same trade level as and not associated with the buyer; or

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"(b) Any sale of like goods that forms part of a series of sales of goods at prices that do not provide for recovery within a reasonable period of time of the cost of production of the goods, with a reasonable amount for administrative and selling costs, profit, and any charges added thereto.

"(3) If there was not a sufficient number of sales of like goods made by the exporter by reason of the fact that the exporter sold goods solely or primarily for export, or the like goods sold by the exporter for home consumption in the country of exportation were sold to purchasers with whom the exporter is associated or to purchasers not of the same or substantially the same trade level as the importer, but there were sales of like goods for home consumption in the country of exportation by other sellers, there may be substituted for the exporter any one of such sellers as the Minister may specify.

"(4) Where the Government of the country of exportation has a monopoly or substantial monopoly of the trade of that country, or determines or substantially influences the domestic price of goods in that country, the Minister may determine the normal value of the goods to be an amount equal to—

"(a) The price of like goods produced or manufactured in a third country determined by the Minister and in the ordinary course of business sold for home consumption in, or exportation from, that country; or

"(b) The cost of production of like goods in a third country determined by the Minister, with a reasonable amount for administrative and selling costs, profit, and any charges added thereto; or

"(c) The price payable for like goods produced or manufactured in New Zealand and sold for home consumption in the ordinary course of business in New Zealand.

"(5) Notwithstanding anything in the foregoing provisions of this section, if, in the opinion of the Minister, the normal value of goods cannot be determined in accordance with those provisions, the value of the goods shall be determined by the Minister as—

"(a) The price of like goods when recently sold by the exporter or an exporter of like goods to importers in any country other than New Zealand which fairly reflects the market value of the goods at the time of the sale of the goods to the importer in New Zealand, adjusted to reflect the differences in terms and conditions of sale, in taxation, and other differences relating to the price comparability between the goods sold to the importer in New

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Zealand and the like goods sold by the exporter to importers in any country other than New Zealand;
or

“(b) The cost of production of like goods with a reasonable amount for administrative and selling costs, profit, and any charges added thereto.

“(6) Where goods in respect of which the Minister may give a direction under section 186A (1) of this Act are exported to New Zealand from more than one exporter, whether or not the goods are exported from more than one country, the Minister may determine the normal value of such goods by taking the normal values of the goods of such of those exporters as he thinks fit and selecting a normal value based upon a representation of the normal values so taken.

“(7) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the foregoing provisions of this section, the normal value of the goods shall be an amount determined by the Minister that is fair and reasonable having regard to all relevant information.

“186C. **Export price**—(1) For the purposes of this Part of this Act, the export price of any goods sold to an importer in New Zealand, notwithstanding any invoice or affidavit to the contrary, shall be the exporter's sale price for the goods, or the price at which the importer has purchased or agreed to purchase the goods, adjusted by deducting therefrom, where applicable,—

“(a) The costs, charges, and expenses incurred in preparing the imported goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption:

“(b) Duties and taxes imposed by virtue of the Customs Acts, whether paid by the importer or any other person:

“(c) All other costs, charges, and expenses resulting from the exportation of the imported goods, or arising after their shipment from the country of export or, as the case may require, from the country of origin:

“(d) Where credit terms granted to the importer with respect to the sale of the goods are more favourable than credit terms granted by the exporter to purchasers with respect to the sale of like goods for home consumption, an amount determined to reflect the value to the importer of the more favourable credit terms.

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“(2) Notwithstanding anything in subsection (1) of this section, the Minister may determine the export price of goods where—

“(a) There is no exporter’s sale price or no price at which the importer in New Zealand has purchased or agreed to purchase the goods; or

“(b) Goods are shipped to New Zealand on consignment and there is no known purchaser in New Zealand for the goods; or

“(c) The sale of the goods for exportation was a sale between associated persons; or

“(d) The export price is influenced by reason of any compensatory arrangement which directly or indirectly affects or relates to—

“(i) The price of the goods; or

“(ii) The sale of the goods; or

“(iii) The net return to the exporter, vendor, manufacturer, or producer of the goods; or

“(iv) The net cost to the importer of the goods; or

“(e) The Minister is satisfied that sufficient information has not been furnished or is not available to enable the export price of the goods to be ascertained in accordance with subsection (1) of this section, or for any other reason the export price cannot be ascertained in accordance with that subsection.

“186D. **Countervailing duty**—(1) The Comptroller may initiate an investigation on being satisfied that there is sufficient evidence of the elements of countervailing duty set out in this section.

“(2) Where, pursuant to an investigation under subsection (1) of this section, the Minister establishes that any country is providing, directly or indirectly, any subsidy, bounty, or concession with respect to the manufacture, production, or export of any class or kind of goods imported into New Zealand and it is established also that the importation of such goods causes or threatens to cause material injury to any industry in New Zealand or in any other country which is a contracting party to the General Agreement on Tariffs and Trade, or materially retards the establishment of any industry in New Zealand or in that other country, 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 any such goods imported into New Zealand a special duty of Customs (in this Act referred to as countervailing duty) and such duty shall be levied, collected, and paid in respect of any such goods.

“(3) The amount or rate of countervailing duty levied under this section in respect of any goods shall be determined by the Minister but shall not exceed the amount of the subsidy.

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bounty or concession found to exist, calculated in terms of subsidisation per unit of the subsidised and exported products:

“Provided that the amount or rate of countervailing duty levied under this section shall not exceed a rate or amount which in the opinion of the Minister is sufficient to remove the material injury referred to in subsection (2) of this section.

“(4) Where the Minister has reasonable cause to believe that any subsidy, bounty, or concession has been allowed, taken, or granted, either directly or indirectly, upon the manufacture, production, or exportation of any goods exported to New Zealand, he may consult with the Government of the country of exportation with a view to arriving at a mutually acceptable solution before giving a direction under subsection (1) of this section or under section 186E of this Act.

“(5) Where, in relation to the exportation of any consignment of goods to New Zealand, the Minister is considering whether a countervailing duty may be imposed under subsection (1) of this section, the Minister may suspend his consideration of that consignment if he is given and accepts—

“(a) An undertaking by the Government of the country of exportation or country of origin that the Government will, in relation to any future export trade to New Zealand in goods of the same kind as the goods in the consignment, review any subsidy, bounty, or concession referred to in subsection (2) of this section, and make any changes that may be found to be necessary to avoid causing or threatening material injury to any industry in New Zealand or in any other country which is a contracting party to the General Agreement on Tariffs and Trade, or avoid materially retarding the establishment of any industry in New Zealand or in that other country; or

“(b) Any undertaking by the exporter of the goods in the consignment that the exporter will so conduct his future export trade to New Zealand in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to any industry in New Zealand or in any other country which is a contracting party to the General Agreement on Tariffs and Trade, or to avoid materially retarding the establishment of any industry in New Zealand or in that other country:

“Provided that the Minister may—

“(c) Be given and accept any amendment to an undertaking because of altered circumstances; and

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"(d) In the event of an interested party offering satisfactory evidence substantiating the need for a review, or otherwise at the Minister's own initiative, he may at any time decide that the need for an undertaking no longer exists and that the investigation is accordingly terminated.

"(6) The Minister may, by notice in the *Gazette*, revoke any notice made under the authority of this section, and upon revocation countervailing duty imposed by that notice shall cease to be payable.

"(7) Any direction given under this section may, in the discretion of the Minister, require the imposition of countervailing duty on goods imported into New Zealand before the date on which the direction is given where material injury to any industry in New Zealand has been caused by a substantial importation of such goods, and the goods were not imported earlier than 90 days immediately preceding—

"(a) The date of the giving of a provisional direction in respect of the goods under section 186E of this Act; or

"(b) The date of the giving of the direction under this section.

"(8) Every determination of the Minister made under the authority of this section shall be final.

"(9) Subject to the Official Information Act 1982, the Comptroller, upon request, shall afford any interested party to an investigation access to all relevant information and the Comptroller shall take into account any views expressed by any such interested party.

"186E. Provisional dumping and countervailing duty—

(1) If, during the course of an investigation made pursuant to section 186A or section 186D of this Act, the Minister has reasonable cause to believe that—

"(a) Any goods which have been imported into New Zealand are goods in respect of which he may direct the imposition of dumping duty or countervailing duty; and

"(b) Action is necessary to prevent injury being caused during the period of the investigation,—

he may give a provisional direction that payment of such duty in respect of those goods shall be secured in accordance with Part IX of this Act, in such amount as he may determine.

"(2) A provisional direction given under subsection (1) of this section (unless in the meantime it is replaced by a direction given under section 186A or section 186D of this Act) shall cease to have effect at the expiry of the period of—

"(a) In the case of dumping duty, 6 months following the date on which the provisional direction was first given; or

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“(b) In the case of countervailing duty, 4 months following the date on which the provisional direction was first given.

“(3) If any provisional direction given under subsection (1) 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 section 186A or section 186b of this Act:

“Provided that where the countervailing duty imposed under section 186b of this Act exceeds the amount of provisional duty imposed by subsection (1) of this section, the amount of the excess shall be remitted.”

(2) The following enactments are hereby consequentially repealed:

- (a) Section 129 of the principal Act:
- (b) Section 6 of the Customs Amendment Act 1971:
- (c) Section 4 of the Customs Acts Amendment Act 1973:
- (d) Section 4 of the Customs Amendment Act 1981:
- (e) Section 9 of the Customs Acts Amendment Act (No. 2) 1982.