

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

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Committee on Subsidies and Countervailing Measures

RESPONSES TO QUESTIONS FROM THE UNITED STATES ON NEW ZEALAND'S COUNTERVAIL LEGISLATION

The following are responses to questions posed by the United States (SCM/W/170) on New Zealand's legislation governing countervailing duties.

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 (SCM/1/Add.15/Rev.2) as the legislation governing anti-dumping and countervailing duty actions. The text of the Act has been circulated in SCM/1/Add.15/Rev.3.

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 Subsidies 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 186A(1) - "Industry":

The exclusion of importers from the definition of domestic industry appears to be an absolute one.³ Could there not be circumstances under which a firm may have imported the product under investigation and yet still be legitimately considered as part of the domestic industry - e.g., when the ratio of the firm's imports to its production of the like product is negligible? How would New Zealand authorities treat a domestic firm which is related to an exporter under investigation but which does not import the product being investigated?

Response s.3(1) [s.186A(1)]

The definition excludes from "industry" importers of the allegedly subsidized goods, i.e. goods from the exporters and countries named in the complaint, as provided for in Article 6:5 of the Subsidies Code.

A domestic firm which is related to an exporter under investigation but which does not import the product being investigated, would generally be considered part of the industry if it was a producer of like goods.

Question: Section 186A(1) - "Subsidies goods":

Why is there a separate notation for the reduction or remission of freight in paragraph (b) when transportation subsidies are specifically noted in the preceding paragraph (a)?

Response s.3(1) [s.186A(1)]

The additional definition relating to the reduction or remission of freight reflects the contents of Article VI:3 of the General Agreement, which refers to "... including any special subsidy to the transportation of a particular product", and is applied in accordance with the provisions of Article VI and of the Subsidies Code.

The reduction or remission of freight when provided by a private entity would normally be a matter considered in terms of an anti-dumping action. New Zealand notes in this regard that the issue of subsidies by private entities is not settled in the GATT, but agrees with the conclusion of the Group of Experts working Paper 7 of 18 May 1981, that other GATT provisions such as anti-dumping action would be more appropriate, although the New Zealand legislation does provide for reductions or remissions of freight when provided by non-governmental entities to be treated as subsidies".

Question: Section 186M

Subsection (1) allows for the acceptance of undertakings when the foreign government or exporter commits to "conduct future export trade to New Zealand ... to avoid causing or threatening material injury ...". Subsection (2) refers specifically to price increases in an undertaking. Is this section intended to apply to both anti-dumping and countervailing duty proceedings? Are price undertakings the only form of undertakings provided for? If not, why is there no reference to other forms, such as cessation of exports or, in the case of countervailing duty investigations, the limitation or elimination of the subsidy?

Response s.15 [s.186M]

The provisions of s.15 are not limited to price undertakings, but cover any undertakings under which the "Government or the exporter, as the case may be, will so conduct future export trade to New Zealand of like goods ... to avoid causing or threatening material injury to an industry or materially retarding the establishment of an industry."

Undertakings may be offered at any time from the initiation of an investigation and while the investigation is underway in respect of the consignment of goods concerned, until a final determination is made.

The level of price undertaking will be determined so as to prevent material injury, based on the particular circumstances of each individual case, and may be less than the level of the subsidy.

Question: Section 186P

It is unclear whether this section is intended to refer to the application of anti-dumping and countervailing duties on behalf of third country industries, or only anti-dumping duties. In addition, there is no reference to obtaining the agreement of the Contracting Parties in doing so. Could New Zealand clarify these points?

Response s.18 [s.186P]

It is the intention that s.18 of the Act should apply to both anti-dumping and countervailing actions. The amendment of the section to clarify this intent is under consideration.

Before taking anti-dumping or countervailing measures under s.18 of the Act, New Zealand would meet the obligation under Article VI:6 of the General Agreement to obtain the agreement of the CONTRACTING PARTIES. Consideration is being given to the need for including in the Act a specific reference to this obligation.