

**GENERAL AGREEMENT ON  
TARIFFS AND TRADE**

**RESTRICTED**

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**Committee on Anti-Dumping Practices**

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**RESPONSES TO QUESTIONS FROM THE EEC  
ON NEW ZEALAND'S ANTI-DUMPING LEGISLATION**

The following are responses to questions posed by the EEC (ADP/W/198) on New Zealand's anti-dumping legislation.

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 1      Section 186 A(1)**

**I) "Dumping" (in conjunction with Section 186 A(3))**

Under which circumstances do the New Zealand authorities consider an application for anti-dumping action to be receivable or protective measures to be justified when such an application relates to goods "intended to be imported" into New Zealand?

**Response**

The term "goods ... intended to be imported" encompasses goods which have not actually been through the process of importation, but for which there is a reasonable basis to determine that they will be imported. The definition needs to be read in the context of the Act as a whole. Thus, references in the Act to intended imports are qualified, where appropriate, by references to purchases or purchase prices. This indicates that a sale has taken place and would include constructive sales such as contractual arrangements which have all of the essential characteristics of sales, but which may not be termed "sales" by the parties involved. The term does not encompass the simple possibility that goods may be imported, nor mere allegation or conjecture that the goods will be imported.

**II) "Industry" (in conjunction with Section 186 F)**

When determining the "industry" in a particular case, do the New Zealand authorities always exclude producing companies who have also imported the product concerned? If not, how do the authorities deal with such a situation?

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

The definition excludes from "industry" importers of the allegedly dumped goods, i.e. goods from the exporters and countries named in the complaint, as provided for in Article 4:1(i) of the Anti-Dumping 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 2      Section 186 B(2) "Export price"**

On what criteria may the Minister rely for determining the export price when

- a) goods are to be shipped to New Zealand and there is no known purchaser in New Zealand for these goods, or
- b) there is no exporter's sales price or no price at which the importer or a person not associated with the importer, has purchased or agreed to purchase the goods?

Response      s.4(2)      [s.186 B(2)]

In the circumstances provided for in s.4(2) of the Act, the export price may be constructed or determined on such reasonable basis as the Minister considers appropriate, in accordance with Article 2:5 of the Code.

**Question 3      Section 186 C "Normal value"**

- (2)(a)(I) What are the criteria of the New Zealand authorities for determining whether or not there are relevant domestic sales with a view to determining normal value?

Response      s.5(2)(a)(i)      [s.186 C(2)(a)(i)]

The circumstances of each individual case will be taken into account in determining whether or not there are relevant domestic sales for the purposes of determining normal value.

- (2)(a)(II) In what situation can it be found that the sales that would otherwise be relevant for determining a price (for normal value) are not suitable for use in determining such a price?

Response s.5(2)(a)(ii) [s.186 C(2)(a)(ii)]

In determining whether or not there are relevant domestic sales the particular facts of the individual case will be taken into account. In particular, it would be established on the facts whether any sales were in the ordinary course of trade and were arms length transactions.

The situation in which it might be found that the sales that would otherwise be relevant for determining a price (for normal value) are not suitable, will depend on the individual circumstances of each case. The section is intended to cover those situations where there may be a price in the ordinary course of trade for a like product destined for consumption in the exporting country, but where for reasons particular to the case concerned, that price does not provide an appropriate comparison for the purposes of the Act, such as sales at different levels of trade or at significantly different periods of time.

- (2)(d) What is the meaning of the words "on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export"?

Response s.5(2)(d) [s.186 C(2)(d)]

The words "on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade" must be read with the totality of s.5(2) of the Act, and refer to the elements to be included in the construction of a normal value.

- (2)(d)(I) On what criteria will the Minister determine reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale?

Response s.5(2)(d)(i) [s.186 C(2)(d)(i)]

The Minister will determine the amounts for administrative and selling costs, delivery charges and other charges incurred in the sale on a reasonable basis, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export. These charges will generally be determined on costs actually incurred by the exporter concerned as verified from accounting records. Where such information is not available, or where the Minister has goods reason to believe that this method is inappropriate, then costs will be allocated on a reasonable basis.

- (3)(b) On the basis of what criteria will the authorities of New Zealand determine that the government of the country of export determines or substantially influences the domestic price of goods in that country?

Response      s.5(3)(b)      [s.186 C(3)(b)]

A determination that the government of the country of export determines or substantially influences the domestic price of goods in the country would be made where it was considered that such influence had occurred resulting in a market situation such that, on objective consideration, it could not be said that the goods had been sold in what would otherwise amount to the ordinary course of trade. Such a situation could exist when prices are controlled.

- (5)      In the situations covered by this paragraph, what method does the Minister intend to use for making such adjustments as are necessary to ensure that the normal value is properly comparable with the export price of those goods?

Response      s.5(5)      [s.186 C(5)]

Adjustments necessary to ensure that the normal value is properly comparable with the export price of the allegedly dumped goods are those referred to in Article 2:6 of the Code.

Question 4      Section 186 J(2) "Preliminary determination"

Does an exporter have the opportunity to request the Minister to extend the period between the initiation of an anti-dumping proceeding and the preliminary determination from 60 to 90 days in the situations envisaged by this paragraph? If so, what should an exporter do in such circumstances?

Response      s.12      [s.186 J]

A decision by the Minister to extend the period between the initiation of an anti-dumping proceeding and the preliminary determination from 60 to 90 days, is generally based on a request by the investigating authority on one or more of the grounds set out in s.12(2), and not by the exporter. There is, however, no impediment to an exporter requesting an extension from the Minister, on grounds as set out in the Act, but the Minister would normally act on the advice of the officials responsible for the administration of the legislation.

The circumstances giving rise to an extension of deadline on the grounds that there exists "difficulty of obtaining satisfactory evidence" will depend on the circumstances of each individual case.

Question 5      Section 186 L(3) "anti-dumping and countervailing duties"

In what circumstances will it be ensured that the amount of anti-dumping duty is not greater than is necessary to prevent the material injury or a reoccurrence of the material injury to an industry or the material retardation of the establishment of an industry, as the case may require?

Response        s.14                  [s.186 L]

It should be noted in the context of the imposition of anti-dumping duties, that New Zealand applies such duties only to shipments of goods subject to an order when the export price of the shipment concerned is less than the normal value established by investigation.

In all circumstances, the level of anti-dumping duty will be determined by the Minister bearing in mind the desirability of ensuring that the amount of duty is not greater than is necessary to prevent the material injury or a reoccurrence of the material injury to an industry or the material retardation of the establishment of an industry, as the case may require, and subject to the particular circumstances of each individual case.

Where a duty is established at a rate of less than the dumping margin, a non-injurious fob price level is established with the amount of duty imposed being the margin between this price level and the export price for the particular shipment.

Question 6        Section 186 M "Price undertakings"

- (1)        From when and until what stage of the investigation will an exporter have an opportunity for offering an undertaking?
- (2)        How will the level of price undertakings be determined when the amount of relief necessary to prevent the material injury is lower than the dumping margin?

Response        s.15                  [s.186 M]

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 exporter proposes a level of price undertaking, and it is in within the minister's discretion to accept it if he is satisfied on the question of preventing material injury.

The conduct of future trade with New Zealand can include the cessation of imports.

Question 7        Confidential Information

How do the New Zealand authorities intend to deal with confidential information made available to them in the course of an investigation and used for dumping and injury findings?

Response

Access to official information is governed by the Official Information Act 1982. Under this Act information may be withheld only in certain

specified circumstances, including *inter alia* where making it available would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

Question 8      Disclosure to interested parties

In general, do interested parties have access to information used by the New Zealand authorities in their decision-making process, but not published in formal decisions?

Response

Under the Official Information Act 1982 the New Zealand authorities are obliged to allow access to official information, including information used by the authorities in reaching decisions on anti-dumping matters, except where the information may reasonably be withheld under the specific criteria set out in the Act.