GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Committee on Anti-Dumping Practices

RESPONSES TO QUESTIONS FROM BRAZIL ON NEW ZEALAND'S ANTI-DUMPING LEGISLATION

The following are responses to questions posed by Brazil and circulated in ADP/W/219.

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.

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Question 1:

What is the criteria adopted so as to not consider the hypothesis foreseen in 186A(2)(a), (b), (c) as "arms length transaction", taking into account what is stated in Article 2, paragraph 5 of the Anti-Dumping Code?

Response:

The interpretative provisions of s.3(2) and s.3(3) of the Act allow for the identification of transactions which are not arms-length transactions, for the purpose of establishing the appropriate method of determining the export price under s.4, which reflects the Code in Article 2:5 where it refers to the situation where "... the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party ...".

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Question 2:

Which are the procedures to be adopted under the hypothesis foreseen in 186A(3) - goods "intended to be exported", bearing in mind the rules of the Anti-Dumping Code?

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 purchase or purchase prices. This indicates that a sale has taken place and would include constructive sales such as contractual arrangements which have all 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.

Question 3:

What are the criteria and parameters that will be used in order to assess the degree of discretion of the authority ("Minister") in the decisions foreseen in 186A(8), 186B(1)(iii), 186(2)(a), (c), (d) and 3?

Response:

Decisions made by the Minister are based on the facts of the particular situation before him, and must be reasonable and fair and in accordance with the exercise of the statutory powers provided by the Act.

Question 4:

Which are the methods that will be employed in the adjustments foreseen in 186C(3) - assessments of the normal value?

Response:

The adjustments provided for in s.5(3) relate tot he situation where the government of the country of export has a monopoly or substantial monopoly of the trade of the exporting country and determines or substantially influences the domestic price of goods in that country, i.e. the section provides for state trading countries. This provision reflects the second Interpretative Note to Article VI:1 of the General Agreement.