CONSULTATIONS UNDER ARTICLE XXII:1

Request by New Zealand

The Permanent Representative of New Zealand has addressed the following communication to the United States Trade Representative in Geneva.

My authorities have instructed me to request consultations with your delegation under Article XXII:1 of the General Agreement on Tariffs and Trade in respect of countervailing duty and antidumping orders on exports of low fuming brazing copper rod and wire from New Zealand. The countervailing duty aspects of this case also have implications for the application of countervailing duties on two other New Zealand export items (lamb meat and carbon steel wire rod). We consider that the United States has not met its obligations to New Zealand in terms of GATT Article VI which governs the application of antidumping and countervailing duties. We do not consider that earlier consultations held in Washington with your authorities offered a satisfactory response to our concerns.

First, there is the matter of the methodology used in the assessment of countervailing duties on account of the Export Performance Taxation Incentive (EPTI). As indicated in L/5768/ADD.9 of 15 November 1985, this programme is subject to a firm, legislated phase-out which has the effect of reducing the rate of tax credit for export by 50% in each successive (tax) year until 31 March 1987, after which no further incentives will be available. In calculating the countervailing duty rates, your authorities have applied the EPTI benefit received on the previous year's exports to the subsequent year's exports. The lag effect created by this methodology means that the legislated EPTI phase-out will not be accurately reflected in the final CVD rates applied to exports from New Zealand. The final CVD rates established after the administrative reviews provided for in section 355.41 of the Countervailing Duty Regulations will still be inflated as a result of this methodology.
Secondly, the import of low fuming brazing copper rod and wire from New Zealand has also been subject to the imposition of antidumping duties. There are two points of concern to my authorities here: the methodology used by the United States Department of Commerce in assessing the margin of dumping and the ruling by the United States International Trade Commission that New Zealand brazing copper rod exports were causing material injury to the United States industry.

We consider that in assessing the dumping margin, the Commerce Department did not make the adjustments required in terms of its own legislation for differences in level of trade (wholesale/retail) and quantity differences between the sales by the New Zealand company concerned on the domestic and US markets respectively. In our view, this ruling does not conform with GATT Article VI:1, which states that "due allowance shall be made in each case for differences in conditions of sales, ... and for other differences affecting price comparability".

As far as the finding on material injury is concerned, we do not consider that the evidence presented to the ITC justified the conclusion reached by the majority of Commission members.

In requesting consultations under Article XXII, New Zealand reserves all its rights under the General Agreement, including those under Article XXIII, should it not be possible to find a mutually satisfactory solution to the matters outlined.