The following are responses to questions posed by the EEC (SCM/W/168) 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 (ADP/1/Add.15) 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 1 Section 186 A (1) Definition of "like goods"

In interpreting this definition, what are the "characteristics" of the goods which the New Zealand authorities would take into account? Physical characteristics only? Economic indicators? (If so, please explain which).

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

The characteristics taken into account in determining like goods are not limited to physical characteristics, but would take into account other "characteristics", such as production methods and end use, as appropriate to the particular circumstances of the case.

Question 2 Section 186 A (1) Meaning of "reduction or remission of freight"

Does this provision apply only when "rebates, refunds or other allowances" are granted for the export of goods to New Zealand by the Government (or other public agency) of the exporting country?
Alternatively, does it apply when these benefits are granted by private entities in the exporting country? By the government or by public agencies in a third country? By private entities in a third country?

**Response**  

s.3(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 3  
**Section 186 E (3)**  
**Amount of the subsidy involving State-trading countries**

What criteria will the New Zealand authorities apply in determining whether to apply, in the situation described in subsection 3 (a) and (b), countervailing duty or anti-dumping procedures, as allowed in Article 15 of the Subsidies Code?

**Response**  

s.7(3)  

Any decision on whether to apply countervailing duty or anti-dumping procedures in the case of State-trading countries will depend on the circumstances of each individual case.

Question 4  
**Section 186 H (2)**  
**Notice of Initiation of an Investigation**

This subsection only provides for the notice to be given and Section 186 G only deals with the form of a notice. How do the New Zealand authorities reconcile these provisions with the requirement in Article 2:5 of the Subsidies Code that the notice "shall describe the subsidy practice or practices to be investigated?"

**Response**  

s.10(2)  

Any notice made pursuant to the Act must specify the reasons for the giving of the notice, and in respect of countervailing duty investigations this will include a description of the subsidy practices to be investigated. In addition, all interested parties are provided with copies of the non-confidential report on which the decision to initiate an investigation was based.
Question 5  Section 186 J (2)  Extension of deadline for preliminary determinations

Can the New Zealand authorities explain in what circumstances they would consider that there exist "difficulty of obtaining satisfactory evidence", such that an extension of the deadline would be justified?

Response  s.12(2)  [s.186 J (2)]

A decision by the Minister to extend the period between the initiation of a countervail 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 6  Section 186 J and 186 K (2)  Notice of preliminary or final determination

Both these provisions only state that the determination "shall be given by notice". How are they reconciled with the requirements of Article 2:15 of the Subsidies Code?

Response  s.12(4) & 13(2)  [s.186 J & K (2)]

Any notice made pursuant to the Act, including notices of preliminary and final determinations, must specify the reasons for the giving of the notice. In addition the interested parties are provided with non-confidential versions of the report on which a determination is based, which provides a detailed discussion of the basis and reasons for findings and conclusions relating to the investigation.

Question 7  Section 186 L (5)  Reviews

Are there any conditions for an "interested party" to be able to request a review, other than the need to submit evidence justifying the request? What kind of evidence would an interested party have to submit?

Response  s.14(5)  [s.186 L (5)]

Provided a party is an "interested party" there are no additional conditions which must be met before a review is requested, other than the need to submit evidence justifying the request. The evidence which it would be necessary to submit would include evidence of a change in the existence or amount of subsidy; the extent of material injury; or any
change in the causal link between the subsidy and the material injury; or evidence relating to the "industry" or "like goods" which would justify a review.

The reviews provided for in s.14(5) relate to the need for the continued imposition of the countervailing duty. The review would accordingly cover the existence of subsidisation, the extent of injury, and the causal relationship between injury and the subsidisation of like goods. Where no request for a review is received from an interested party an administrative decision has been taken that the Minister will review the need for the continued imposition of countervailing duty within two years. The amount of countervailing duty actually imposed may be subject to more frequent reassessment view in order to ensure that the level of duty is not greater than is necessary to prevent material injury. A sunset provision has not been considered necessary.