The following communication has been received from the Permanent Mission of New Zealand.

The passage of the Dumping and Countervailing Duties Amendment Act 1990 has made some changes to New Zealand's anti-dumping and countervailing law. These changes, which are described below, fall into two broad areas - amendments necessary to implement the agreement between Australia and New Zealand to remove anti-dumping from trans-Tasman trade; and some technical or minor textual amendments intended to correct or clarify the language of the Dumping and Countervailing Duties Act 1988 (the principal Act).

Removal of trans-Tasman anti-dumping

During the 1988 Review of Anzcerta Australia and New Zealand signed the Protocol to ANZCERTA on Acceleration of Free Trade in Goods. Under Article 4 of that Protocol, it was agreed that with effect from 1 July 1990 neither country would take anti-dumping action against goods originating in the territory of the other country. This agreement reflected the view that anti-dumping measures were no longer appropriate from the time of the achievement of both free trade in goods between the member States on 1 July 1990 and the application of their competition laws to relevant anti-competitive conduct affecting trans-Tasman trade in goods.
The Protocol does not remove the application of countervailing measures in trans-Tasman in trade.

The provisions of the Dumping and Countervailing Duties Amendment Act 1990 which put the agreement into effect are as follows:

s.4 Meaning of "goods of Australian origin"
(inserts new s.3B into the principal Act)

This section defines goods of Australian origin in terms of goods which qualify for entry under the rates and exemptions provided for Australian goods under the New Zealand Tariff. This means goods which are wholly produced in Australia or which meet the rules of origin requirements for Australian content of at least 50 per cent of the ex-factory or works cost. Note that goods shipped from Australia which cannot meet the definition of goods of Australian origin remain subject to anti-dumping action.

s.7 Initiation and subsequent investigation
(amends s.10 of the principal Act)

This section provides that no investigation into alleged dumping of goods of Australian origin can be initiated.

s.16 Transitional measures in respect of goods of Australian origin

The situation regarding investigations initiated prior to the entry into force of this Act is covered by this section, which effectively terminates any such investigations and revokes any anti-dumping orders applying to goods of Australian origin. However, liability for anti-dumping duties incurred prior to entry into force on 1 July 1990 remains, and such duties may be collected.

Technical amendments

The amendment of the principal Act to provide for the removal of trans-Tasman anti-dumping provided an opportunity to make some non-contentious technical amendments to the text of the Act. These amendments correct textual errors or clarify the intention of the Act, particularly in relation to ensuring that its provisions correctly parallel the language of the GATT Anti-Dumping Code on which it is based.

The provisions of the Dumping and Countervailing Duties Amendment Act 1990 which so amend the principal Act are as follows:

s.2 Interpretation
(amends s.3 of the principal Act)

(1) See s.3.
(2) The word "other" in the original definition of "like goods" was irrelevant.

(3) The introduction of the reference to "Tariff" in the definition of Australian goods requires a definition of the term in s.3 of the principal Act.

s.3 Meaning of "industry"
(inserts new s.3A into the principal Act)

The principal Act did not correctly reflect the GATT Anti-Dumping Code definition of industry, which allows for the exclusion of importers of the dumped goods from the definition at the discretion of the investigating authorities. The language in the principal Act could have been interpreted so as to exclude from the definition of industry any company which imported like goods, whether or not they were dumped goods, and irrespective of the volume of imports or the reasons for importation. The new language permits the investigating authorities to include producers who are also importers when, on the basis of the facts of the particular case, it is considered that the company should not be excluded from being treated as a New Zealand producer.

s.5 Act to bind the Crown
(inserts new s.3C into the principal Act)

This section makes provision for the Crown to pay anti-dumping and countervailing duties, which restores the situation which applied when anti-dumping legislation formed part of the Customs Act.

s.6 Form of notice
(amends s.9 of the principal Act)

The previous requirement to specify the reasons for the giving of a notice is modified to require only a brief summary of the reasons. This reflects current practice of publishing only a brief description of the reasons for a notice published in the Gazette, but with copies of the relevant detailed investigation reports provided to interested parties and made publicly available on request.

s.8 Termination of investigations
(amends s.11 of the principal Act)

The amendment removes the potential for confusion between the use of different words to mean the same thing. The word "initiation", as used in s.11(2), replaces "re-opening" previously used in s.11(3).

s.9 Preliminary determination
(amends s.12 of the principal Act)

The amendment ensures consistency in references to "provisional measures" by amending the reference to "provisional duties".
s.10 **Anti-dumping and countervailing duties**

*amends s.14 of the principal Act*

(1) This amendment clarifies the situation with regard to the imposition of anti-dumping and countervailing duties, in particular the relationship between provisional measures and anti-dumping and countervailing duties, and the basis on which a notice relating to such duties is made.

(2) This provision clarifies the availability of amendments to duty amounts and rates established under s.14 by providing for reassessments of such rates and amounts, bearing in mind that s.14(2) allows the Minister discretion in establishing rates or amounts which could be less than the full margin of dumping or the full amount of subsidy.

s.11 **Price undertakings**

*amends s.15 of the principal Act*

The amendment corrects an error in the principal Act, and brings the provision into line with the GATT Anti-Dumping Code, by including the Minister as one of those who may desire the completion of an injury investigation.

s.12 **Provisional measures**

*amends s.16 of the principal Act*

(1) The amendment removes the ambiguity of interpreting that the Minister may have determined the export price, the normal value, or the amount of the subsidy, pursuant to s.12, when in fact they are determined under ss.4, 5 and 7 respectively.

(2) The amendment clarifies the situation regarding the refund of securities given pursuant to a provisional direction, taking into account the amendment to s.14.

s.13 **Retrospective measures**

*amends s.17 of the principal Act*

This provision corrects an error in the principal Act and brings it into line with the GATT Anti-Dumping Code by requiring that both conditions in s.17(3)(a) are present rather than applying them as alternatives. It also ensures that the 90-day period encompasses actual entry into the commerce of New Zealand by using delivery for home consumption and removal for home consumption as opposed to entry for home consumption which may occur at a point in time before entry into the commerce of New Zealand.
s.14 Third country anti-dumping and countervailing duties  
(amends s.18 of the principal Act)

The amendment confirms that third country actions can relate to both anti-dumping and countervailing duties.

s.15 Savings  
(amends s.19 of the principal Act)

This section confirms that all reassessments of anti-dumping or countervailing duties are the responsibility of the Minister of Commerce, including any that were previously the responsibility of the Minister of Customs.
An Act to amend the Dumping and Countervailing Duties Act 1988

[29 June 1990]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Dumping and Countervailing Duties Amendment Act 1990 and shall be read together with and deemed part of the Dumping and Countervailing Duties Act 1988 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1990.

2. Interpretation—(1) Section 3 (1) of the principal Act is hereby amended by repealing the definition of the term “industry”.

(2) Section 3 (1) of the principal Act is hereby amended by omitting from paragraph (b) of the definition of the term “like goods”, the word “other” in the second place where it appears.

(3) Section 3 (1) of the principal Act is hereby amended by adding the following definition:

“‘Tariff’ has the meaning given to it in section 2 (1) of the Tariff Act 1988.”
8. Meaning of "industry"—The principal Act is hereby amended by inserting, after section 3, the following section:

"3A. (1) For the purposes of this Act 'industry', in relation to any goods, means—
(a) The New Zealand producers of like goods; and
(b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods, but does not include producers who are also importers, other than specified importers, of the allegedly dumped or subsidised goods.

(2) For the purposes of subsection (1) of this section, the Minister or the Secretary may, in his or her discretion, determine that a producer who is also an importer of like goods is a specified importer if the Minister or the Secretary is satisfied that, having regard to the nature and extent of the importation of the allegedly dumped or subsidised goods including the value, quantity, frequency and purpose of the importation, that person should not be excluded from being treated as a New Zealand producer.

(3) Notice of every determination made under subsection (2) of this section shall be published in the Gazette.

4. Meaning of "goods of Australian origin"—The principal Act is hereby amended by inserting, after section 3A (as inserted by section 3 of this Act), the following section:

"3B. For the purposes of this Act, "goods of Australian origin" means goods falling within the classes of goods for the time being entitled to be entered under the Tariff at the rates and exemptions provided for Australia, or, if no rates or exemptions are provided in relation to particular goods for Australia, that would be entitled to be entered under the Tariff if rates and exemptions were provided in relation to those particular goods."

5. Act to bind the Crown—The principal Act is hereby amended by inserting, after section 3A (as inserted by section 4 of this Act), the following section:

"3C. This Act binds the Crown."

6. Form of notice—Section 9 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) Containing a brief summary of the reasons for the giving of the notice; and"

7. Initiation and subsequent investigation—Section 10 of the principal Act is hereby amended by adding the following subsection:

"(7) Nothing in this section shall authorise the Secretary to initiate an investigation in relation to any alleged dumping of goods of Australian origin."

8. Termination of investigations—Section 11 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

"(3) Notice shall be given of the initiation of every further investigation under subsection (2) of this section."

9. Preliminary determination—Section 12 (5) of the principal Act is hereby amended by omitting the word "duties", and substituting the word "measures".

10. Anti-dumping and countervailing duties—(1) Section 14 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

"(1) Where the Minister, having made a final determination under section 13 of this Act, is satisfied, in relation to the importation into New Zealand of goods, that—
(a) The goods are being dumped or subsidised; and
(b) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded,
the Minister may by notice state that this section applies to those goods, and—
(c) There shall be charged, collected, and paid on demand of the Collector on those goods, including goods in relation to which a provisional direction has been given under section 16 of this Act, that are dumped, a special duty to be known as anti-dumping duty; and
(d) There shall be charged, collected, and paid on demand of the Collector on those goods, including goods in relation to which a provisional direction has been given under section 16 of this Act, that are subsidised, a special duty to be known as countervailing duty."

(2) Section 14 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:
“(3a) The Minister may, from time to time, reassess the rate or amount of anti-dumping or countervailing duty, including any elements of any formula used to establish such a rate or amount, determined under subsection (2) of this section, may determine a new rate or amount in accordance with that subsection, and, in that event, shall give notice of the new rate or amount.”

11. Price undertakings—(1) Section 15 (2) of the principal Act is hereby amended by omitting the words “The price”, and substituting the words “Any price”.

(2) Section 15 (4) of the principal Act is hereby amended by inserting, after the words “completed if”, the words “the Minister or”.

12. Provisional measures—(1) Section 16 (1) of the principal Act is hereby amended by omitting from paragraph (a) of the proviso the words “by the Minister pursuant to”, and substituting the words “for the purposes of”:

(2) Section 16 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) When a provisional direction given under subsection (1) of this section ceases to have effect, any security given pursuant to the provisional direction shall be released, except in relation to goods to which the preliminary determination applied, and to the extent that duty is payable pursuant to a direction given under section 14 of this Act on those goods.”

13. Retrospective measures—Section 17 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

“(3) Where the Minister determines—

“(a) In respect of dumped goods—

“(i) Either that there is a history of dumping causing material injury or that the importer was or should have been aware that the goods were dumped and that such dumping would cause injury; and

“(ii) That the material injury is caused by substantial dumped imports of a product in a relatively short period to such an extent that in order to preclude it recurring the Minister is of the opinion that it appears necessary to levy an anti-dumping duty retrospectively:

“(b) In the case of subsidised goods, in critical circumstances, where the Minister determines that material injury which is difficult to repair is caused by massive imports, in a relatively short period, of goods benefitting from export subsidies paid or bestowed inconsistently with the provisions of the General Agreement on Tariffs and Trade and the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, and where it is deemed necessary, in order to preclude the recurrence of such material injury it is necessary to impose countervailing duty retrospectively,—

the Minister may levy an anti-dumping or countervailing duty, as the case may be, on goods deemed to have been delivered for home consumption in accordance with section 17 of the Customs Act 1966 or deemed to have been removed for home consumption under section 17A of that Act not more than 90 days prior to the date of the application of provisional measures.

“(4) Where the Government of the country of export or the exporter, as the case may be, from whom the Minister has accepted an undertaking pursuant to section 15 of this Act violates the undertaking and the Minister, in accordance with section 16 of this Act, levies provisional duties, anti-dumping duty or countervailing duty may be levied in accordance with section 14 of this Act on goods deemed to have been delivered for home consumption in accordance with section 17 of the Customs Act 1966 or deemed to have been removed for home consumption in accordance with section 17A of that Act not more than 90 days before the application of the provisional measures, except that such retrospective duty shall not apply to goods deemed to have been delivered for home consumption in accordance with section 17 of the Customs Act 1966 or deemed to have been removed for home consumption in accordance with section 17A of that Act before the date of the violation of the undertaking by the Government of the country of export or the exporter, as the case may be.”

14. Third country anti-dumping and countervailing duties—Section 18 of the principal Act is hereby amended by inserting, after the words “anti-dumping duty”, the words “or countervailing duty, as the case may be,”.
15. Savings—Section 19 of the principal Act is hereby amended by adding the following subsection:

"(4) Anti-dumping duty or countervailing duty charged on goods pursuant to section 186A of the Customs Act 1966 (as inserted by section 2 (1) of the Customs Amendment Act (No. 3) 1987) and dumping duty imposed on goods pursuant to section 186A of the Customs Act 1966 (as inserted by section 11 of the Customs Acts Amendment Act (No. 2) 1983) may, from time to time, be reassessed in accordance with section 14 (3A) of this Act as if the rate or the amount of that duty had been determined under section 14 (2) of this Act."

16. Transitional provisions in respect of goods of Australian origin—(1) Any investigation that, immediately before the commencement of this section, was being carried out by the Secretary pursuant to section 10 of the principal Act in relation to any alleged dumping of goods of Australian origin, shall cease on the commencement of this section.

(2) Nothing in sections 12 to 17 of the principal Act shall, after the commencement of this section, apply in relation to goods of Australian origin in relation to which an investigation into any alleged dumping has been initiated under section 10 of the principal Act.

(3) Notwithstanding section 19 (1) of the principal Act, nothing in section 186A of the Customs Act 1966 (as inserted by section 2 (1) of the Customs Amendment Act (No. 3) 1987) shall, after the commencement of this section, apply in relation to goods of Australian origin in relation to which an investigation into any alleged dumping has been initiated under section 186A of that Act (as so inserted).

(4) Notwithstanding section 19 (2) of the principal Act, nothing in section 186A of the Customs Act 1966 (as inserted by section 11 of the Customs Acts Amendment Act (No. 2) 1983) shall, after the commencement of this section, apply in relation to goods of Australian origin in relation to which an investigation into any alleged dumping has been initiated under that section.

(5) Nothing in subsections (2), (3), and (4) of this section affects the collection and payment of dumping duty or anti-dumping duty, as the case may be, payable immediately before the commencement of this section.

This Act is administered in the Ministry of Commerce.