

TARIFFS AND TRADE

Committee on Anti-Dumping Practices

Original: English

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

The following are responses to questions posed by Canada (ADP/W/201) 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 No. 1: Definition of Dumping

Dumping is defined in section 186A in relation to goods "imported into New Zealand or intended to be imported into New Zealand". This wording suggests a broad interpretation of the concept of "introduced into the commerce of another country" prescribed in Article 2(1) of the Code. This question has also been discussed on several occasions by the Committee. What criteria will be applied to determine when a product is "intended" to be imported? Will the New Zealand authority require the existence of a formal contractual arrangement to import the good?

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

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.

Question No. 2: Institutional Arrangements

The injury determination will be conducted by the Minister in parallel to the determination of the existence of dumping. While there is no requirement in the Code for two separate investigating authorities, there is value in a separated system for transparency reasons. Why did New Zealand choose not to have a separate adjudicative body for the injury determination? Will reasonable opportunity be provided to exporters/importers to argue their case? In this connection, will special procedures be instituted to ensure the process is as open and transparent as possible? Will counsel for exporters/importers get access to confidential information pertaining to complainants? What appeal mechanisms are available to parties to an anti-dumping action?

Response

In New Zealand, matters relating to the provision of information by Government agencies are governed by the Official Information Act 1982. The basic principle of this Act is that information shall be made available unless there is good reason for withholding it.

Accordingly, it is an objective of the New Zealand dumping and countervail legislation to provide for transparency within the constraints of the need to respect commercial confidentiality. For this reason, the law includes those requirements set out in s.10(4) regarding the need to provide reasonable opportunity for interested parties to present evidence, to have access to non-confidential information, and for meetings of the parties. Such requirements to assure transparency would apply equally to separate adjudicative bodies, and the number of such bodies would not, therefore, affect the level of transparency.

The question of whether or not to have separate adjudicative bodies to determine questions of dumping and injury was considered at the time of the earlier revision of the legislation. It was decided that on balance the creation of an independent body to deal specifically with injury determinations was not the most appropriate administrative arrangement in the New Zealand situation.

The legislation includes provision in s.10(4) for interested parties to argue their case.

There is no appeal mechanism with regard to the subject matter of decisions made by the Minister or the Secretary of Commerce. However, there is a review mechanism available to parties to an anti-dumping or countervailing action on application to the High Court for judicial review

of a decision made under a statutory power. The mechanism is contained in s.4 of the Judicature Amendment Act 1972. More specifically this allows an application for review in relation to the exercise, refusal to exercise, or proposed or purported exercise by any person of a statutory power, and provides for the grant of any relief that the applicant would be entitled to in, inter alia, proceedings for a declaration against that person. The application is entitled to an order declaring that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, or the Court may set aside the decision. The Court has specific power to direct that the matter be reconsidered and determined, and can give directions as it thinks just.

Question No. 3: Reviews

Sections 186L(5) and (6) put an onus on the Minister to review decisions on his own initiative or upon request of an interested party. The legislation does not, however, prescribe a specific time period. Is it the intention of the New Zealand authorities nonetheless to conduct a periodic review of the margin of dumping, and if so, how frequently? Some signatories have included in their legislation sunset clauses whereby an order would automatically lapse after a specified period of time unless a review has confirmed the continuation of the injury finding. Is it the intention of the New Zealand authorities to adopt such a measure?

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

The reviews provided for in s.14(5) relate to the need for the continued imposition of the anti-dumping duty. The review would accordingly cover the extent of dumping and injury and the causal relationship between injury and the dumping of like goods. Where no request for a review is received from an interested party, the Minister will generally review the need for the continued imposition of anti-dumping duty within two years. The margin of dumping may vary because of a range of factors, and may therefore be subject to more frequent reassessment in order to ensure that the level of anti-dumping duty is not greater than is necessary to prevent material injury.