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**Committee on Anti-Dumping Practices**  
**Working Group on Implementation**

Original: English

**ARTICLE 13 – JUDICIAL, ARBITRAL OR ADMINISTRATIVE REVIEW**

Paper by New Zealand

The following communication, dated 10 October 2003, has been received from the Permanent Mission of New Zealand.

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**Legislative Framework**

There are no provisions in New Zealand's principal trade remedies legal instrument, the Dumping and Countervailing Duties Act 1988, which incorporate the provisions of Article 13 of the Anti-Dumping Agreement regarding the necessity to maintain judicial review procedures. The right to judicial review action in relation to dumping and subsidy investigations is within the Judicature Amendment Act 1972. This Act contains the provisions for the Courts to review any statutory decision in New Zealand law. A decision taken under the Dumping and Countervailing Duties Act is a decision capable of review under that Act as it is or concerns a statutory power of decision.

**Purpose of Judicial Review**

Judicial review is a review by a Judge of the High Court of New Zealand of the exercise of, or refusal to exercise, a statutory power of decision. The outcome of a review will determine whether a decision or action is unauthorised or invalid. The purpose of judicial review in New Zealand is twofold:

- The definition of principles to govern administration; and
- The safeguarding of individual interests against illegal or unreasonable administrative action, or from administrative action taken without following proper procedures.

**Grounds to Take Judicial Review Action**

In judicial review the Court's focus is on the process by which a decision is made and not necessarily the merits or otherwise of that decision. The court can intervene when a decision is clearly unreasonable or substantively unfair and the Judge has a wide range of discretionary powers. This includes the ability to declare that, until a review is complete, the status quo existing before the decision should prevail.

The grounds on which a Judge will intervene are:

1. Illegality:

- Such as:
  - misinterpreting the law; or
  - making a decision for an improper purpose; or
  - failing to take into account relevant matters; or
  - factual errors; or
  - rigidly applying a pre-determined policy; or
  - the decision-maker acting under dictation from someone else; or
  - invalid delegation of the decision-making power.

2. Unreasonableness:

- Where a decision-maker has made a decision that no sensible decision-maker, acting with due appreciation of his/her responsibilities would have arrived at.

3. Unfairness:

- Such as:
  - not giving a person affected by the decision a fair opportunity to make representations (also known as the "right to be heard");
  - bias;
  - inconsistency; or
  - substantive unfairness.

## **Procedures**

Sections 9 and 10 of the Judicature Amendment Act 1972 govern the procedures that are followed in a judicial review proceeding. An application for review is made by way of a motion to the High Court accompanied by a statement of claim. The statement of claim states:

- the facts on which the applicant bases the claim to relief;
- the grounds on which the applicant seeks relief; and
- the relief sought.

The matter then comes within the jurisdiction of a Judge who has the power to call a conference of the parties or give direction to ensure that any application for review can be determined in a convenient and expeditious manner so that all matters in dispute may be effectively and completely determined.

If a Judge calls a conference of the parties he/she can:

- settle the issues to be determined;

- direct what persons shall be cited, or need not be cited, as respondents to the application for review, or direct that the name of any party be added or struck out;
- direct which parties shall be served;
- direct by whom and within what time any statement of defence shall be filed;
- require any party to make admissions in respect of questions of fact; and, if that party refuses to make an admission in respect of any such question, that party shall be liable to bear the costs of proving that question, unless the Judge by whom the application for review is finally determined is satisfied that the party's refusal was reasonable in all circumstances, and accordingly orders otherwise in respect of those costs;
- fix a time by which affidavits or other documents shall be filed;
- fix a time and a place for the hearing of the application for review;
- require further or better particulars of any facts, or of the grounds for relief, or of the relief sought, or of the grounds of defence, or of any other circumstance connected with the application for review;
- require any party to make discovery of documents, or permit any party to administer interrogatories;
- in the case of an application for review of a decision made in the exercise of a statutory power of decision, determine whether the whole or any part of the record of proceedings in which the decision was made should be filed in the Court, and give such directions as is fit as to its filing;
- Exercise any powers of direction or appointment vested in the Court or a Judge by its rules of Court in respect of originating applications;
- Give such consequential directions as may be necessary.

Once the papers are served and the Judges directions (if any) are complied with, the respondent to the application files a statement of his defence to the statement of claim. Up until the commencement of a hearing of an application for review, the Judge can exercise any of the powers listed above without holding a conference.

The matter then proceeds to a formal hearing if necessary.

### **Remedies**

The Court has discretion whether to grant relief in the case of a successful application. In cases where relief is granted, a Judge may:

- declare that certain aspects of the decision were invalid (such as things that should have been done but have not, or that the decision maker took into account irrelevant matters or failed to take into account relevant matters);

- set aside the decision as unlawful; or
- direct the person who made the decision or took the action to reconsider and determine the matter and may give directions as to how this should be done.

Any party to an application for a review who is dissatisfied with any final or interlocutory order in respect of the application may appeal the decision to the New Zealand Court of Appeal.

### **General**

Judicial review is the only avenue by which an anti-dumping decision can be reviewed in New Zealand. There are no provisions for arbitral or administrative tribunals in the administrative law system. As judicial review proceedings are under the jurisdiction of the Courts in New Zealand the process meets the requirement of Article 13 of the Anti-Dumping Agreement that such procedures be independent of the authorities responsible (in New Zealand's case, the Minister of Commerce and the Chief Executive of the Ministry of Economic Development) for the determination or review in question.

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