

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/AHG/W/52

17 September 1998

(98-3517)

Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation

Original: English

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Paper by New Zealand

The following communication, was received 15 September 1998 from the Permanent Mission of New Zealand.

The following information is provided in response to the request made in WTO/AIR/900 of 12 August 1998 for the submission of certain information under the topic headings currently under discussion within the Group.

TOPIC 1: CONFIDENTIAL INFORMATION

Members are requested to submit, if they have not already done so, a list of information considered confidential by nature. New Zealand has already submitted this information (G/ADP/AHG/W/44 and G/ADP/AHG/W/10).

Members are also required to consider and submit their views on a number of procedural questions posed by the Chairman, including information on their own practice:

(A) How should confidential information be submitted to the investigating authorities?

Confidential information is, in the main, provided to the New Zealand investigating authority (the Ministry of Commerce) by way of either written, oral or electronic submissions.

The New Zealand legislation (the Dumping and Countervailing Duties Act 1988), provides that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect on the person supplying the information or upon the person from whom the information

* See document G/ADP/W/401 for descriptions of the topics.

was acquired) or which is provided on a confidential basis by parties to an anti-dumping investigation, will upon good cause being shown, be treated as confidential by the Ministry of Commerce

Parties submitting confidential information may be requested to provide a non-confidential version or a non-confidential summary. Information can be disregarded if the party submitting confidential information fails to provide a satisfactory non-confidential version or a non-confidential summary of the confidential information submitted.

The Ministry of Commerce requires that all information supplied be provided with an English translation. Normally only information for which an English version or translation is provided will be taken into account in an investigation.

(B) How should the non-confidential version of confidential information be submitted?

Parties requesting that information should be treated as confidential are asked to:

- (i) clearly identify the information for which confidential treatment is requested;
- (ii) provide justification for the request for confidential treatment; and
- (iii) provide a non-confidential version or non-confidential summary of the information for which confidential treatment is requested, or if it is claimed that the information is not susceptible to such a summary, a statement of the reasons why such a summary is not possible. A non-confidential version should reproduce the original but have information considered to be confidential either omitted or summarized.

Information for which confidential treatment is not requested will be treated as non-confidential and will be included in the Ministry's Public File of an investigation. The Public File is available for perusal or copying by any interested party or member of the public.

(C) What are the criteria applied by the investigation authorities in deciding whether to accept or reject a request for confidentiality?

A list of what New Zealand considers to be information which is confidential by nature has been provided (G/ADP/AHG/W/44 and G/ADP/AHG/W/10).

Due regard is also taken of the provisions of Articles 6.4 and 6.5 to the Agreement.

(D) How is confidential information handled by the Authority?

Confidential information is placed on confidential files and held in a secure work area. Access to these files is restricted to Ministry officials in the Trade Remedies Group.

(E) In the event that a Member provides access to confidential information, how should the confidential information be accessed?

The Ministry of Commerce will not disclose confidential information without the permission of any party that would be adversely affected by its release. The exception is where judicial review proceedings are initiated which provide for the discovery of confidential documents. The release of documents in this instance is limited to lawyers acting for interested parties and identified technical experts.

TOPIC 3: SAMPLING METHODS

Replies to Brazilian Questions in G/ADP/AHG/W/46 of 20 April 1998

Where a sample must be used with regard to producers, exporters, importers or types of product, New Zealand practice is to determine the sample size as part of the process leading up to initiation. This allows questionnaires to be sent out with initiation documents, or shortly thereafter.

Circumstances that could lead to the modification of a sample include:

- further information coming to hand regarding the population e.g. the narrowing of a product category;
- the lack of a geographical spread in the sample;
- failure to be provided with or find sufficient contact details;
- a selected party deciding not to take part in the process necessitating the addition of another party;
- voluntary participation by a party not selected in the original sample.

If a sample is modified New Zealand does not see the need for new consultations with all interested parties. In practice all parties that are identified at the time of initiation are notified as long as sufficient contact details have been established. This includes details of the basis for any sample chosen and, if a party has not been chosen, an invitation to take part in the process if they wish to. The changing of a sample would therefore not alter any party's rights.

Reply to India's Question

"Statistically Valid" Samples

If the number of parties (population) to be contacted in a case is small, an investigating authority may elect to conduct a census rather than a sample, because the cost, manpower, and time drawbacks would be relatively insignificant. If the population was large, and an investigating authority wished to use valid statistical methodology then probability sampling techniques would be used so that random sampling error could be predicted. This would involve calculating an appropriate sample size which requires knowledge of the variance of the population, the magnitude of acceptable error and the confidence level that is required. As this methodology can be both time consuming and expensive, other statistical methods such as non-probability techniques as described below are used. While convenient and cost effective, they use no statistical techniques to measure random sampling error.

New Zealand Practice

Where a sample is used, it is prepared on the basis of a descending order of suppliers' share of imports. This sample can be varied to take account of specific circumstances such as lack of geographical spread, or the number of companies involved, but will usually cover those parties responsible for 60 per cent of the imports. It may be necessary to limit the number of companies in the sample to those that can reasonably be examined given the administrative resources available and the time constraints of the investigation. This is a "convenience" or "judgment" sampling process and is a non-probability sampling method.

The sample selected from the list of exporters identified from Customs data is prepared and listed in the Initiation Report, and questionnaires sent to them and to the importers they supply. Those parties not selected are also listed and can request questionnaires if they wish to take part.

To date there has been no need to sample producers in New Zealand.

Chairman's Question

Given the practice adopted by New Zealand described in the previous paragraph, voluntary responses are not discouraged, and can be used in determining an individual margin of dumping.

TOPIC 4: SPECIAL CIRCUMSTANCES

New Zealand provided a list of examples of circumstances that were considered insufficient to constitute "special circumstances" within the meaning of Article 5.6 in its paper G/ADP/AHG/W/11.

No investigations have been self initiated by the New Zealand investigating authority.

TOPIC 5: NOTIFICATION OF EXPORTING MEMBER

Contact Point

Notification under Article 5.5 for cases involving New Zealand should, in the first instance, be sent to the New Zealand Embassy or High Commission based in, or accredited to, the Member.

If this option is not available notification can be made to:

The Secretary
Ministry of Foreign Affairs and Trade
Private Bag 18-901
Wellington
NEW ZEALAND

ATTN: TND

Tel: 64 04 494 8500
Fax: 64 04 472 9596

Information in Notifications

Information that should be provided in an Article 5.5 notification should include:

- a description of the goods alleged to be dumped;
- a very brief summary of the evidence provided;
- to the extent possible, information on the exporters identified in the application; and
- a reminder of the requirement to respect confidentiality until a decision has been made to initiate an investigation.

TOPIC 6: HEARINGS

Section 10(6) of the Dumping and Countervailing Duties Act 1988 provides that the Secretary of Commerce shall ensure that all interested parties to an investigation are given reasonable opportunity to present in writing and orally all evidence relevant to an investigation. It also provides for interested parties to have access to all non-confidential information relevant to the presentation of their case to enable them to prepare representations on the basis of that information. The Act also provides that, on request being made, parties can meet those parties with adverse interests in order to present opposing views.

While the first two provisions are normal practice, little or no use has been made of the hearing provision in the legislation. Nevertheless if parties requested such a hearing the Ministry would arrange for a meeting of those parties indicating a wish to meet, with an agenda proposed after consultation with the relevant parties. The Ministry would chair the meeting and a record of proceedings would be included on the Public File. As there is no legal obligation to attend such a meeting, the absence of any party would not be prejudicial to its interests.

TOPIC 7: PROVISION OF ESSENTIAL FACTS

At no later than day 150 of its investigating process, the Ministry of Commerce produces an Essential Facts and Conclusions Report which is distributed to interested parties for comment, and in order to comply with Article 6.9 of the Agreement. This Report contains the essential facts under consideration which are likely to form the basis for the decision whether to apply definitive measures. There are six sections to this Report under the headings of:

- Proceedings;
- New Zealand Industry;
- Dumping Investigation;
- Injury Investigation;
- Provisional Measures (if applicable); and
- Conclusions.

Each section covers various aspects of the investigation. The type of information included in each section is as follows:

Proceedings

Information is provided about the proceedings under the New Zealand legislation and the Agreement, interested parties, the imported goods, the treatment of exchange rates and the disclosure of information via a public filing system.

The New Zealand Industry

This section covers issues such as like goods, record of imports, the New Zealand market and the standing of the applicant.

Dumping Investigation

The first subsection of this part of the Report deals with the calculation of export prices and records the base prices and adjustments for each company that was subject to a verification visit. The second subsection deals with the normal values established during the verification identifying the methodology used (sales or constructed values) and adjustments made in order to effect a fair

comparison. The export prices and the normal values are then compared to establish the margins of dumping.

Injury Investigation

The Report comments on all aspects considered during the investigation such as: import volumes; price effects such as, including price undercutting, price depression and price suppression; and the economic impact of the dumped goods including actual and potential decline in: output, sales, market share, profits, productivity, return on investments, and utilization of production capacity; any factors affecting domestic prices; the magnitude of the margin of dumping; and if claims are made, actual and potential effects on: cashflow, inventories, employment, wages, growth, ability to raise capital, and investments.

The Report then looks at factors other than the dumped goods that have injured the industry including: the volume and prices of goods that are not sold at dumped prices; contraction in demand or changes in patterns of consumption; restrictive trade practices of, and competition between, overseas and New Zealand producers; developments in technology; the export performance and productivity of the New Zealand producers; and the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importations.

The final subsection aggregates all the conclusions that have been drawn relating to the injury.

Provisional Measures (if applicable)

This section briefly reports on the consideration and application of provisional measures, where this has taken place.

Conclusions

This section lists the conclusions reached by the investigating team on the basis of the information available to it during the investigation. It does not go into the details of any proposed remedy that may be imposed at a later date.

TOPIC 8: PUBLIC NOTICES

The Ministry of Commerce has a generic website address, which is <http://www.moc.govt.nz/>. A dedicated investigating authority site has been commissioned and will be available shortly through that address. The Secretariat will be advised of the address when it becomes available.

New Zealand's legislation requires that a public notice be given when an investigation, (including a reassessment or review) is initiated, terminated, and where a final determination is made. Public notice is also required where a provisional direction is made, where an undertaking is agreed to, and where duties are revoked.

Initiation Notices

New Zealand publishes an initiation notice containing the information required in Article 12.1.1 (i), (ii), and (v). Information required by Article 12.1.1 (iii) and (iv) is provided by way of a separate Initiation Report which also expands on the information provided in the public notice. Interested parties are advised, in accordance with Article 12.1.1 (vi), of the time limits allowed for making their views known in correspondence accompanying the questionnaires and Initiation Reports.

Preliminary and Final Determination Notices

New Zealand publishes preliminary and final notices containing the information required in Article 12.2.1 (i), (ii), and (v). Information required in Article 12.2.1 (iii) and (iv) is provided by way of a separate preliminary or final report which also expands on the information provided in the Public Notice.

Termination and Undertaking Notices

The public notice of the termination or suspension of an investigation following the acceptance of an undertaking is published in terms of Article 12.2.3.

All public notices are given to:

- (i) The government or governments of the country or countries of the export of goods to which the notice relates; and
- (ii) Exporters and importers known by the Ministry of Commerce to have an interest in those goods; and
- (iii) The applicant(s) involved in the investigation; and
- (iv) Where appropriate the government of a third country.

The public notice is also required to be published in the *New Zealand Gazette*, which is the weekly official publication listing all decisions by the New Zealand Government.

As well as meeting these legislative requirements the Ministry of Commerce also publishes quarterly in the *New Zealand Gazette* a list of products currently subject to anti-dumping action. This same list is also published in the New Zealand Customs Service publication *Customs Release* (this publication provides information of interest to the importing and exporting community). The *Customs Release* also publishes articles on new investigations initiated and their status on an as required basis.

TOPIC 9: CONTENTS OF PRELIMINARY AFFIRMATIVE DETERMINATIONS

The Ministry of Commerce produces a Provisional Measures Report which summarizes the basis for any preliminary determination made by the Minister of Commerce. This Report contains information which provides the basis for a determination that there is reasonable cause to believe that goods are dumped and thereby causing material injury, and either that provisional measures are necessary to prevent injury during the remaining period of investigation, or that an undertaking should be accepted, depending on the course of action which is to be followed. This information includes the basis, to the current point in the investigation, for establishing export prices and normal values, and the provisional margin of dumping, and the consequent material injury in terms of the effects of increased import volumes and price effects, as indicated by the injury factors set out in Article 3 of the Agreement.

Where a provisional measure is being applied, the Report will include a discussion of the form and level of measure proposed by the investigating team. Where the Report relates to acceptance of an undertaking, there will be a discussion of the basis for and acceptability of the proposed undertaking.

TOPIC 10: DUTY ASSESSMENTS

Information on New Zealand's lesser duty rule as been provided to the Ad Hoc Group (G/ADP/AHG/W/10).

Duty Assessments

New Zealand operates a prospective system for the determination of duties. The Ministry of Commerce advises the New Zealand Customs Service of the rates or amounts of anti-dumping duty applicable and those rates or amounts are collected and paid on the demand of the New Zealand Customs Service on and from the day after the date on which the public notice is published in the *New Zealand Gazette*.

Section 10(6) of the New Zealand legislation allows for the reassessment of any rate or amount of anti-dumping duty including any elements of any formula used to establish the rate or amount. A reassessment can be initiated by the Secretary of Commerce or, where a request is submitted to the Secretary by an interested party who submits positive evidence justifying the need for a reassessment. This provision also covers new shipper reassessments.

Refund Procedures

Refunds are provided in the following circumstances:

- (i) where a reassessment has resulted in a lower duty being imposed on any goods, a refund may be applicable with effect from the date of initiation of the reassessment;
- (ii) where a review has resulted in a lower duty being imposed on any goods, a refund may be applicable with effect from the date of initiation of the review;
- (iii) where a provisional direction ceases to have effect, or where the amount of provisional anti-dumping duty collected exceeds the amount of duty determined, the amounts are refunded;
- (iv) where goods, which have had anti-dumping duties collected on them, are then re-exported in their same form, anti-dumping duties may be refunded. This is commonly known as a drawback; and
- (v) where anti-dumping duties have been collected in error.

Applications for a refund of anti-dumping duties are made to the New Zealand Customs Service, which can provide a refund of anti-dumping duty if it is approved by the Ministry of Commerce.
