

WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

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**TIMELINE, CONFIDENTIAL INFORMATION, AND LESSER
DUTY RULE (PARAGRAPH 3 OF WTO/AIR/643)**

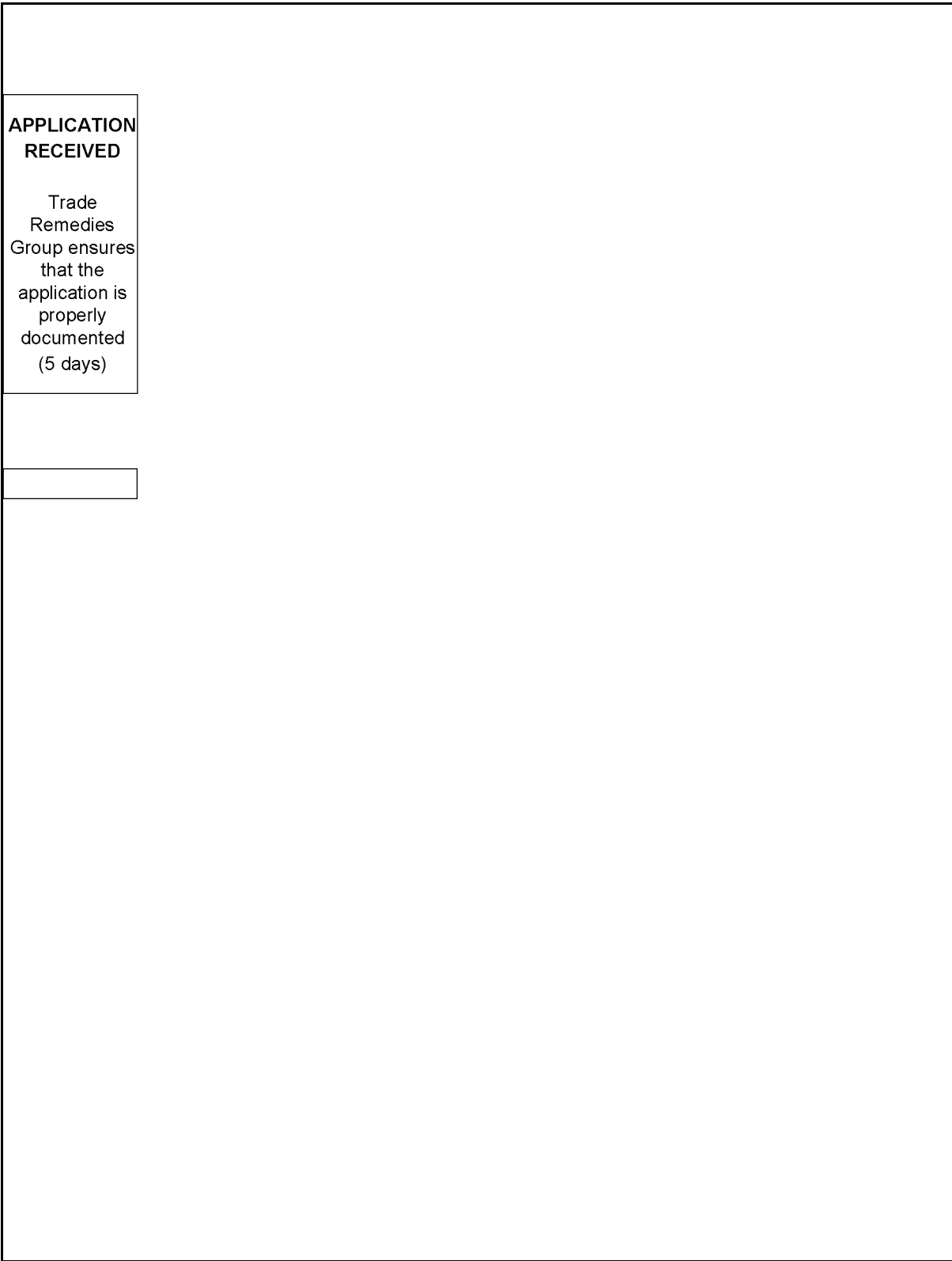
Information Provided by New Zealand

The following communication, dated 8 September 1997, has been received from the Permanent Mission of New Zealand.

(A) **A timeline of when various events occur in New Zealand's investigative process**

As requested in Document WTO/AIR/643 of 16 July 1997 attached is a copy of the timeline of when various events occur in the New Zealand investigative process. The timeline covers the elements of application, initiation, preliminary determination, written submissions from parties, disclosure of essential facts, final determinations and public notices of determinations.

TIMELINE FOR NEW ZEALAND ANTI-DUMPING INVESTIGATIONS



(B) A description of information New Zealand believes is confidential by nature

Information is considered to be confidential if its disclosure would be likely:

- To be of significant competitive advantage to a competitor, e.g. production costs, distribution costs, business sales statistics, research/invention data, technical designs etc.
- To have a significant adverse effect upon the party who submitted the information, or the party from whom the information was acquired by the party who submitted the information, e.g. customer and supplier lists.
- To have a significant adverse effect upon any party to whom the information relates, e.g. statistical/market share information.
- To prejudice the commercial position of a person who supplied or who is the subject of the information, e.g. the names of the individual companies requesting the initiation of an investigation, who may be subject to commercial retaliation by customers who are also importers.
- To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.
- To prejudice the entrusting of information to the Government of New Zealand.
- To prejudice the supply of similar information or information from the same source.
- To disclose a trade secret.
- To effect the maintenance of legal privilege.

(C) A description of how the lesser duty rule is applied by New Zealand

New Zealand submits the following description of how the lesser duty rule is applied in practice by its investigating authorities.

Basis for Lesser Duty

The New Zealand approach to the application of the lesser duty rule is defined by section 14(5) of the Dumping and Countervailing Duties Act 1988, which provides:

In exercising the discretion under subsection(4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

The purpose of a lesser duty, and hence a non-injurious price, is to determine whether a duty less than the margin of dumping is sufficient to remove the material injury or prevent the recurrence of material injury caused by the dumping. This requires an assessment of the extent of injury attributable to the dumping. In this context, it should be noted that the New Zealand authorities consider that injury

is material if it is more than immaterial and if the industry is worse off, i.e. if, as a result of the dumping and the volume and price effects attributable to the dumping, there are adverse economic consequences for the industry, in terms of an actual or potential decline, or other adverse effects, in the injury factors and indices identified in Article 3 of the Agreement.

Removal of Injury

In determining whether or not the lesser duty rule should be applied, the first step is to ascertain the situation which would apply in the absence of the dumping of the goods and the injury attributable to the dumping.

The main impact of dumping is indicated through price effects and the consequent impact on sales and profits. Accordingly, initial indications of the extent of injury attributable to dumping can be established through (a) the margin of price undercutting, or (b) the level at which the industry's prices are non-injurious.

If the margin of price undercutting exceeds the level of undercutting that would be present if the goods were not dumped, then this provides *prima facie* evidence that a lesser duty would not be appropriate. However, if the margin of price undercutting is less than the margin of dumping, then further consideration must be given to the application of the lesser duty rule.

The second approach is to establish a non-injurious price, being the price that would apply in the absence of the injurious dumping. Ideally, such a price should be based on market considerations, such as the prices which prevailed before dumping affected the market. Where such an approach may not be appropriate then alternative approaches could be used, such as constructing a price on the basis of current costs and pre-dumping profit rates, or the current profit rates obtained by industries producing goods in the same general category.

The level of profitability is generally used as a normative indicator of injury, since that is considered the most useful indicator of the health of an industry, and is the factor which combines the economic impact of price and volume effects of the dumped or subsidised imports, and the industry's reaction to them.

Establishing the Level of Duty

Having established the non-injurious market price, the equivalent dutiable value for the goods is established. This will normally involve deducting from the non-injurious market price those cost elements between the dutiable value (usually FOB) and the market level. The relevant market level is taken as the first point of competition in the New Zealand market, i.e. ex-factory for domestic producers, and ex-importer's store for imported goods, which is similar to that normally used for the price undercutting comparison. The cost elements in the formula to calculate the dutiable value will normally include freight costs, importation costs and fees, including transport from wharf to importer's store, normal duty, any other costs associated with importation but not with distribution, and a margin for the importer.

The approach used does not seek to make judgements about what different businesses regard as an appropriate level of profit or any price or profit "entitlement" beyond the factually determined price or profit level achieved before the impact of dumping, or on another reasonable and appropriate basis.

Where prices or profit levels applying before the dumping occurred are used, they will normally be appropriate only when the pre-dumping situation is fairly recent. In the case of a review, or where

there has been a significant period of time between the pre-dumping situation and the time of the investigation or review, an alternative approach may be required to determine the appropriate level of a non-injurious price.

Application of Lesser Duty Rule

New Zealand has applied the lesser duty rule in only four cases, three of which involved closely related products from the same country. This reflects the fact that in most cases the economic position of the industry will be only partly ameliorated by the removal of the dumping.