

**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**

Original: English

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY  
THE GOVERNMENT OF NEW ZEALAND<sup>1</sup> OF LAWS AND  
REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENT

The following communication, dated 10 October 1995, has been received from the Office of the United States Trade Representative.

**ANTI-DUMPING METHODOLOGY**

Price Averaging New Zealand does not appear to have a provision addressing price averaging.

1. On what basis will price comparisons be made (e.g., transaction to transaction, average to average)?

CV - Profit Section 5(2)(d)(ii)(B) (G/ADP/N/1/NZL/2, Page 6) provides for the inclusion of profit in the calculation of constructed value ("CV"). This provision states that profit is to be determined by the rate of profit "normally realized on sales of goods [...] of the same general category in the domestic market..." Article 2.2.2 of the A-D Agreement requires that profit be based on actual profit data pertaining to production and sales of the like product by the exporter or producer under investigation. Reliance on profit for the general category of merchandise is an alternative only available when actual profit for the like product cannot be used.

2. How will New Zealand apply section 5(2)(d)(ii)(B) (G/ADP/N/1/NZL/2, Page 6) requiring profit based on the general category of merchandise to be consistent with the requirement of Article 2.2.2 that profit be based on actual profit for the like product if possible?

CV - Transportation Expenses Section 5(2)(d) (G/ADP/N/1/NZL/2) provides that constructed value includes delivery charges incurred on the sale. Section 4 (G/ADP/N/1/NZL/2, Page 7), however, states that export price is to exclude expenses resulting from the exportation of the goods (presumably including shipping charges). Article 2.4 of the A-D Agreement requires a comparison between export price and normal value that is normally to be made at the ex-factory level.

3. How will New Zealand ensure that the comparison between export prices (exclusive of transportation expenses) and normal value are at a common point of delivery if constructed value is inclusive of delivery charges?

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<sup>1</sup>G/ADP/N/1/NZL/2-G/SCM/N/1/NZL/2

## SUBSIDIES AND COUNTERVAILING MEASURES

Definition of Subsidy The Act defines the term "subsidy" in section 3. (G/ADP/N/1/NZL/2, Page 3). This definition includes "any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign government ..."

4. Article 1.1(a)(1) of the SCM Agreement requires a "financial contribution" by a government for a finding of subsidization. Is a "financial contribution" a necessary prerequisite for a finding of subsidization under the Act? If so, how would the existence of a financial contribution be determined?

## INVESTIGATION PROCEDURES

Initiation / Industry Support Section 10(3) (G/ADP/N/1/NZL/2, Page 12) states that the percentage of support is measured based on "goods **produced for domestic consumption**." Articles 5.4 of the A-D Agreement and 11.4 of the SCM Agreement require that industry support be based on "collective output" without any limitation on output destined for "domestic consumption".

5. Could you please explain how Section 10(3) is consistent with Articles 5.4 of the A-D Agreement and 11.4 of the SCM Agreement given the above mentioned differences?
6. Under section 10(3), may a producer be partially counted in measuring industry support for that portion of its production sold for domestic consumption versus its total production of the like goods? How would such a determination of industry support be made?

Treatment of Proprietary Information Sections 10(6), (7) and (8) govern the treatment of proprietary information. (G/ADP/N/1/NZL/2, Page 12-13) Section 10(6)(b) provides that all interested parties shall be given a reasonable opportunity to have access to public information, unless that information may be withheld under the Official Information Act of 1982.

7. Does the Official Information Act define proprietary information?

Timetable for Investigation Section 10A (G/ADP/N/1/NZL/2, Page 13) provides that "written advice of the essential facts and conclusions likely to form the basis for any final determination" will be given to the exporter/producers, the government of the affected country, and to other interested parties within 150 days of initiation.

8. Does the "written advice" constitute the preliminary determination?

Section 10(6) (G/ADP/N/1/NZL/2, Page 12) provides that after initiation, New Zealand will provide respondents a reasonable opportunity to present evidence relevant to the investigation.

9. How will New Zealand ensure that the "reasonable opportunity" to present information in section 10(6) will provide respondents at least 37 days to respond to any questionnaires in accordance with Articles 6.1.1 of the A-D Agreement and 12.1.1 of the SCM Agreement?

Provisional Measures Section 16(1) (G/ADP/N/1/NZL/2, Page 18) provides that provisional measures may be applied after 60 days from the date of initiation of the investigation in accordance with Articles 7.3 of the A-D Agreement and 17.3 of the SCM Agreement.

10. Section 16(2) (G/ADP/N/1/NZL/2, Page 18) provides that, notwithstanding section 16(1), the Minister may by notice give a provisional direction that payment of duty in respect of the goods subject to investigation shall be secured in accordance with Part IX of the Customs Act 1966. Could you please explain the practical effect of this provision? Could you please explain the rationale under the A-D and SCM Agreements for taking a measure prior to the expiry of the 60 day period after initiation?
11. If provisional measures are imposed pursuant to section 16(2) and do not expire until the final determination pursuant to section 16(3), these measures may be in effect for more than 4 months. Is this interpretation correct? If so, how is this consistent with Articles 7.4 of the A-D Agreement and 17.4 of the SCM Agreement?

### ADMINISTRATIVE REVIEWS

Section 14(10) (G/ADP/N/1/NZL/2, Page 16) provides that where a reassessment results in a lower duty, the Minister **may** require a refund of the difference between the lower duty and the new duty.

12. Article 9.3.2 of the A-D Agreement requires that when the amount of an A-D duty is assessed on a prospective basis, provision must be made for refund upon request of duty paid in excess of the amount of dumping. Section 14(10) however appears to make the refund of overpayment discretionary. Is this interpretation correct?

Section 4(1)(b)(i) (G/ADP/N/1/NZL/2, Page 5) calls for the export price to be reduced by "the amount of duties and taxes imposed under **any Act**" when the purchase of goods by the importer was not at arm's length.

13. Are anti-dumping or countervailing duties considered duties imposed under the Act?

New Shippers Article 14(8) (G/ADP.N/1/NZL/2, Page 16) states that the agency shall, "where requested to do so by an interested party that submits positive evidence justifying the need for a review", initiate the review and complete that review within 180 days of initiation.

14. Article 9.5 of the A-D Agreement provides for the conduct of new shipper reviews for exporters or producers who have not exported the merchandise during the period of investigation and who are not related to any exporter or producer who is already subject to anti-dumping duties. Is section 14(8) intended to be the new shipper provision? If not, will a new shipper provision be added to the Act?
15. Under Section 14(8) will duties be levied during the conduct of the review?
16. Section 14(8) states that a review shall be carried out for an interested party that "submits positive evidence justifying the need for a review". If section 14(8) is a new shippers provision, how is the requirement of a showing of positive evidence consistent with Article 9.5 of the A-D Agreement which does not make reference to such evidence?

Revocations Section 14(7) (G/ADP/N/1/NZL/2, Page 16) empowers the Minister to terminate, in whole or in part, any anti-dumping or countervailing duty imposed pursuant to a final determination,

but does not provide for how the decision to terminate will be made. The location of this provision with those relating to review suggests that this can be achieved through review.<sup>2</sup>

17. What are the means of, and standards for, revocation of A-D/CVD duties and undertakings, outside of the sunset process?

## **INJURY**

18. Section 8(2)(d) of the Act (G/ADP/N/1/NZL/2, Page 9) provides a list of the relevant economic factors to be considered. Is this list exhaustive?
19. Is there a requirement in New Zealand law similar to that contained in Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement, specifying that a determination of threat of material injury be "based on facts and not merely on allegation, conjecture or remote possibility"?
20. Is there a provision in New Zealand law similar to that contained in Article 3.6 of the A-D Agreement and Article 15.6 of the SCM Agreement regarding the examination of production data on the basis of like product or the narrowest group or range of products?

**INDEPENDENT REVIEW** The Act contains no explicit provision for independent review of final administrative A-D or CVD actions.

21. Is independent review available in New Zealand for A-D and CVD determinations? If so, under what statute? Has this statute been notified to the WTO?
22. Are there provisions under New Zealand law for the implementation of WTO panel reports?

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<sup>2</sup> Section 11 of the Act provides guidance on termination of investigations, including implementation of de minimis levels. The New Zealand law, however, does not specify whether these provisions also apply to reviews.