

Trade Remedies: General Information Brochure

July 2005

Contents

INTRODUCTION	1
ANTI-DUMPING AND COUNTERVAILING DUTIES	2
Legislation	2
What Is Dumping?	2
What Is Subsidisation?	2
New Zealand Producers	3
Like Goods	3
Material Injury	3
Investigations	3
Acceptance	3
Initiation	3
Investigation.....	4
Remedies	5
Provisional Measures	5
Retrospective Measures.....	6
Undertakings	6
Reviews and Reassessments	6
Notices	7
Third Country Dumping and Subsidisation	7
International Obligations.....	7
World Trade Organisation.....	7
ANZCERTA.....	7
New Zealand-Singapore Closer Economic Partnership Agreement.....	7
New Zealand-Thailand Closer Economic Partnership Agreement	8
Other Agreements.....	8
Applications	8
TEMPORARY SAFEGUARDS	9
Legislation	9
New Zealand Producers	9
Like Goods or Directly Competitive Goods	9
Serious Injury	9
Application.....	9
Temporary Safeguard Authority Inquiry.....	10
Inquiry Process.....	10
The Report	10
Remedies	10
International Obligations.....	11
World Trade Organisation.....	11
New Zealand-Singapore Closer Economic Partnership Agreement.....	11
New Zealand-Thailand Closer Economic Partnership Agreement	11
Other Agreements.....	11
BILATERAL TRANSITIONAL SAFEGUARDS	12
New Zealand-Thailand Closer Economic Partnership Agreement.....	12
CONFIDENTIAL INFORMATION	13
CONTACT INFORMATION	14

Introduction

This guide is designed to introduce New Zealand's trade remedy system. The information contained in this guide is for reference purposes only. It should not be regarded as providing a definitive statement of law.

There are three different types of trade remedy action. These are anti-dumping duties, countervailing duties and temporary safeguard actions. Each of these is discussed in this brochure.

Anti-Dumping and Countervailing Duties

Legislation

The Dumping and Countervailing Duties Act 1988 provides the legal basis for investigating dumping and subsidisation, and for the imposition of anti-dumping and countervailing duties. The Act provides a mechanism for maintaining fair levels of import competition for New Zealand producers when the dumping or subsidisation of imported goods causes material injury, or threatens to cause material injury to an established New Zealand industry, or materially retards the establishment of a new industry.

New Zealand's legislation reflects the provisions of the World Trade Organisation (WTO) Anti-Dumping Agreement and Subsidies and Countervailing Measures Agreement.

The Act does not provide an alternative to normal tariffs, but is intended to be used only as a means of dealing with dumped or subsidised goods which are causing injury to domestic producers.

What Is Dumping?

Goods are dumped if their export price when imported into New Zealand is less than their normal value in the country of export.

The export price is the price the importer in New Zealand pays for the goods.

The normal value is the price the goods sell for in the country of export.

There has to be a fair comparison of export price and normal value. This means they must be compared at the same level of trade and for sales made at as nearly as possible the same time. The comparison is normally made at the ex-factory level in the country of export. Adjustments can be made for differences in terms and conditions of sale, levels of trade, taxation, quantities, physical characteristics, and any other differences that affect price comparability.

If there are no domestic sales in the country of export that can be used to determine a normal value, constructed values or sales made to a third country can be used.

If the export price is less than the normal value (after adjustments have been made to ensure the price comparison is fair) then dumping has occurred.

What Is Subsidisation?

Subsidisation involves the provision of specific assistance, directly or indirectly, by a Government, in respect of goods exported to New Zealand.

A subsidy can be an export subsidy, aimed specifically at assisting exports, or it can be a domestic subsidy, which provides assistance irrespective of whether or not the goods are exported.

An investigation must seek to establish the extent to which the goods benefit from government assistance. This means identifying the subsidy programme concerned, and its nature and operation, including the product coverage and the form of assistance provided.

Countervailing duties are imposed to offset injury caused by a subsidy. Under WTO rules, not all subsidies can be countervailed.

New Zealand Producers

An application for a subsidy or dumping investigation is made by or on behalf of a New Zealand industry.

The New Zealand producers making the application must represent a significant proportion of New Zealand production of like goods.

Minimum degrees of industry support for an application are required by the legislation. Further information on the qualifying criteria is available from the Ministry.

Like Goods

Like goods are goods that are identical to the imported goods or which have characteristics closely resembling those goods.

Material Injury

Material injury includes current material injury, threat of material injury or material retardation of the establishment of an industry. The New Zealand industry must be able to show that dumped or subsidised imports are causing such injury.

The Act sets out the areas that must be examined in relation to material injury. These are:

- Volume of dumped or subsidised imports;
- Price effects resulting from dumped or subsidised imports;
- Consequent economic impact resulting from the volume and price effects of the dumped or subsidised imports.

Investigations

Once an application is received by the Trade Remedies Group of the Ministry of Economic Development it goes through the following stages:

Acceptance

Upon receiving an application the Ministry will advise the applicant promptly on whether requirements for acceptance are met. If an application is accepted the Ministry must advise the governments of the exporting countries concerned. In the case of a subsidy application an opportunity for consultation with governments must also be provided.

Initiation

Applicants will be advised as soon as possible after acceptance whether the Ministry is satisfied that there is sufficient evidence to justify the initiation of an investigation.

The initiation of the investigation is then made public through notification in the New Zealand Gazette and to all known interested parties, including government representatives of the exporting countries, importers, exporters, and New Zealand producers who are not parties to the application.

Investigation

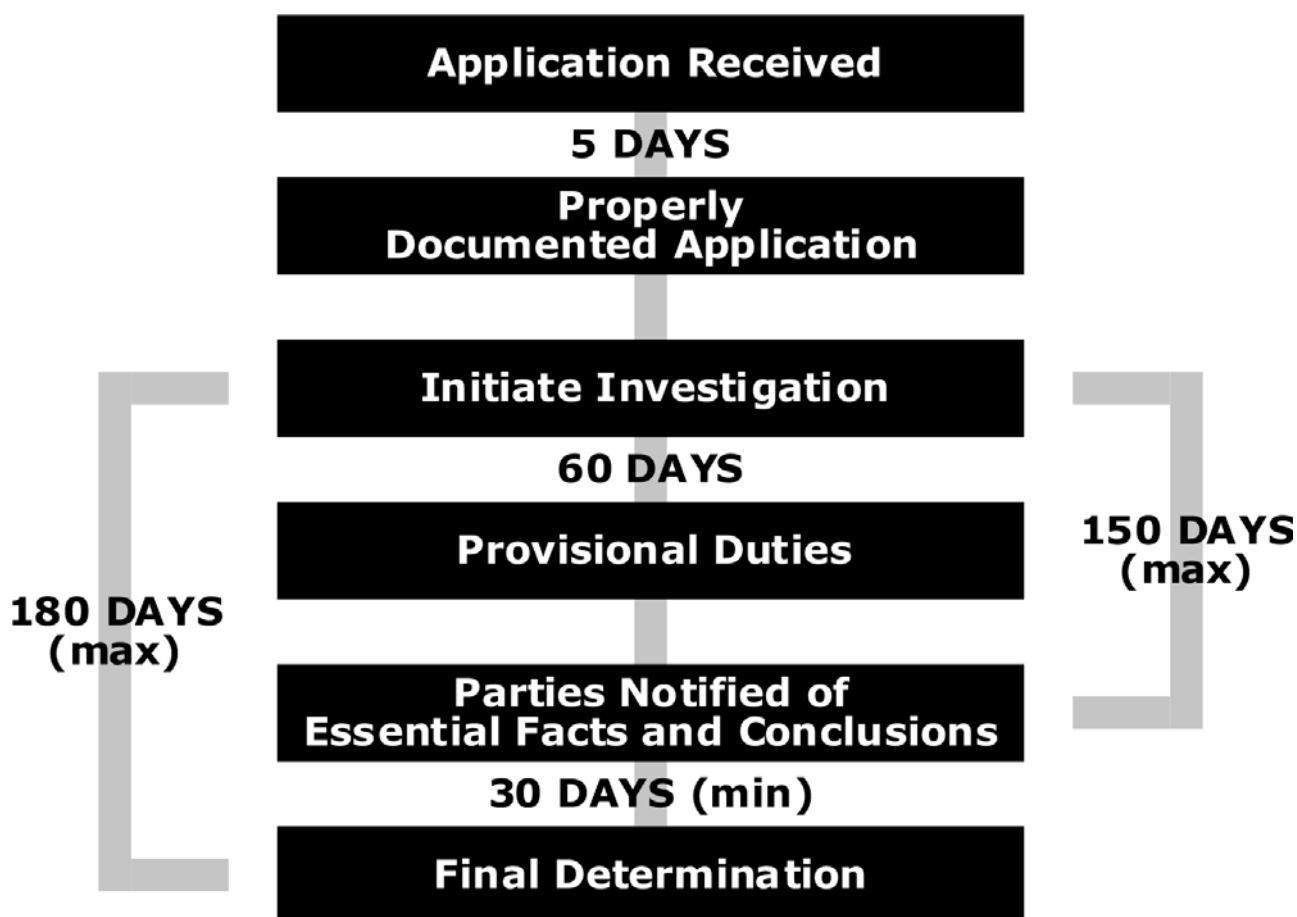
On initiation of a dumping or subsidy investigation known exporters and New Zealand importers are contacted by the Ministry and requested to provide information to assist the investigation. This may include:

- General information about the company
- Cost of production information
- Sales, pricing and distribution information

The full investigation involves thorough checking of the evidence in the application document, and extensive gathering and analysis of industry and trade data to establish whether dumping or subsidisation is causing injury.

Within 150 days of initiating an investigation, the Chief Executive of the Ministry of Economic Development is required to inform all interested parties of the facts and conclusions likely to form the basis for any final determination. This gives parties an opportunity to comment.

An investigation cannot take longer than 180 days from initiation. Within that time the Minister must make a final determination of whether or not the goods are dumped or subsidised and are causing material injury to the domestic industry.



Remedies

Action to impose anti-dumping or countervailing duties can be taken by the Minister of Commerce only when the Minister is satisfied that injury to the domestic industry is being caused by the dumped or subsidised imports.

Anti-dumping and countervailing duties may not exceed the level of the dumping margin or the amount of the subsidy. The level of duty should not be greater than is necessary to prevent material injury.

Anti-dumping or countervailing duties are collected by the New Zealand Customs Service.

Anti-dumping or countervailing duties cease to be payable on the goods five years from the date first imposed unless the duties have been reassessed following a review initiated within that period.

Provisional Measures

The Minister of Commerce may impose provisional measures when satisfied that there is reasonable cause to believe that:

- The goods are being dumped or subsidised; and
- As a result, material injury to an industry has been or is being caused or is threatened, or the establishment of an industry has been or is being materially retarded; and

- Action is necessary to prevent material injury being caused during the remaining period of investigation.

Retrospective Measures

The Minister of Commerce may impose anti-dumping or countervailing duties retrospectively for the period for which provisional measures, if any, have been applied.

In addition, in special circumstances, the Minister may levy anti-dumping or countervailing duties retrospectively on goods entered for home consumption not more than 60 days prior to the date of the application of provisional measures.

Undertakings

The Minister of Commerce may accept undertakings by the government of the country of export, or by the exporters of the goods, that future trade to New Zealand will be conducted so as to avoid causing or threatening to cause material injury, or materially retarding the establishment of a New Zealand industry.

Any price increases resulting from undertakings cannot exceed the margin of dumping or amount of subsidisation.

Undertakings cannot be considered unless the Minister is satisfied that there is reasonable cause to believe in relation to the importation or intended importation of goods into New Zealand, that -

- The goods are being dumped or subsidised; and
- By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

Following acceptance of an undertaking, the investigation of injury can be completed if the Minister or the Government of the country of export or the exporter so desire.

Undertakings are subject to the same time limits as anti-dumping or countervailing duties.

Reviews and Reassessments

Once anti-dumping or countervailing duties are in place any interested party may request that a reassessment or review take place. To do this the request must be supported by evidence justifying the need for a review or reassessment.

The Chief Executive may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty on the Chief Executive's own initiative.

A review involves a re-examination of material injury and the need for the continued imposition of anti-dumping or countervailing duties.

The Chief Executive has up to 180 days to complete the review.

A reassessment is a re-examination of the rate or amount of anti-dumping duty or countervailing duty, including any formula used to establish such a rate or amount. There is no statutory time limit for completing a reassessment.

Notices

Notices are published in the *New Zealand Gazette*, including the Customs edition, and are given for:

- Initiation of investigations, reviews and reassessments;
- Imposition of provisional duties;
- Final determinations;
- Termination of investigations (including termination on acceptance of an undertaking);
- Reassessment and revocation of duties.

Third Country Dumping and Subsidisation

If requested by the government of a third country, the Minister may impose anti-dumping or countervailing duties on dumped or subsidised goods imported into New Zealand. This requires investigation to establish that such imports are causing injury to an industry in the third country.

International Obligations

World Trade Organisation

The WTO Agreement on Implementation of Article VI of GATT 1994 (the WTO AD Agreement) and the WTO Agreement on Subsidies and Countervailing Measures (the WTO SCM Agreement), provide the international framework of rules and obligations on which the New Zealand legislation is based.

ANZCERTA

Australia and New Zealand have agreed to dispense with anti-dumping action in relation to goods produced in either country. This applies only to goods which qualify for duty free access under ANZCERTA.

It is still possible to take countervailing action against subsidised goods from Australia.

New Zealand-Singapore Closer Economic Partnership Agreement

New Zealand and Singapore may take anti-dumping and countervailing action against each other, but in the case of anti-dumping action higher *de minimis* dumping margin and negligible import volume thresholds apply for initiation and termination purposes. Anti-dumping and countervailing duties will cease after three years unless reviewed, rather than after five years as provided for under WTO rules. See <http://www.mfat.govt.nz/tradeagreements/cepsingdocs/singcep.html>.

New Zealand-Thailand Closer Economic Partnership Agreement

Existing WTO rights and obligations on anti-dumping and countervailing duties procedures are maintained. See http://www.med.govt.nz/buslt/trade_rem/guides/thai-cep/.

Other Agreements

New Zealand has trade agreements with Pacific Forum Island Countries and Canada, which require certain notification and consultation procedures to be carried out in relation to anti-dumping and countervailing actions.

Further information is available from the Trade Remedies Group.

Applications

Application Kits set out the information required for a dumping or subsidy investigation.

Application Kits can be obtained from the Trade Remedies in Contact Information.

Application Kits in electronic format are also available by email request.

Advice and assistance in completing the application can be provided by the Trade Remedies Group.

Temporary Safeguards

Temporary safeguards are short-term measures to remedy serious injury to a New Zealand industry caused by sudden increases in imports.

Legislation

The Temporary Safeguard Authorities Act 1987 provides for inquiries to be carried out into imported goods by Temporary Safeguard Authorities, and for recommendations to be made about urgent temporary safeguard measures to be taken to allow an industry to adjust to increased competition from imports.

New Zealand Producers

An application for temporary safeguard action can only be made by or on behalf of a New Zealand industry.

The New Zealand producers making the application must a major proportion of New Zealand production of like goods and directly competitive goods.

Like Goods or Directly Competitive Goods

Like goods are goods that are identical to the imported goods or which have characteristics closely resembling those goods.

Directly competitive goods are goods that, as a matter of fact and commercial common sense, are substitutable for imported goods.

Serious Injury

Serious injury means significant overall impairment to the economic viability of a domestic industry. The areas that must be evaluated in relation to serious injury are:

- The rate or amount of the increase in the volume and value of the imports; and
- The economic impact of the increased importation of the goods on the industry; and
- Factors other than the imports which have injured or are injuring the industry.

Application

Any New Zealand industry may apply to the Minister of Commerce for a Temporary Safeguard Authority inquiry. However, only the Minister of Commerce may request that an inquiry be undertaken by a Temporary Safeguard Authority, and all referrals to an Authority are at the Minister's discretion.

The New Zealand industry must be able to show that imports are causing or will cause serious injury to the New Zealand industry. Evidence of actual or potential injury must be provided to support the request for temporary safeguard action.

Once an application is received by the Minister, it is assessed by the Trade Remedies Group to see if it meets the criteria and contains sufficient information to provide a basis for the Minister to decide whether or not to request that a Temporary Safeguard Authority undertake an inquiry.

The Trade Remedies Group provides secretarial and other services to Authorities.

Temporary Safeguard Authority Inquiry

An inquiry must be completed within 30 working days of the Authority receiving the Minister's request to undertake the inquiry.

The Minister may transmit to the Authority a statement of Government policy which must be taken into consideration. Any such statement is published in the New Zealand Gazette.

Inquiry Process

In an inquiry, an Authority gathers and considers information in order to determine whether imports are causing serious injury.

The Authority considers the application and other information provided by the industry, and also considers submissions from interested parties providing factual evidence and comments on issues relating to imports and injury.

Submissions should address the question of serious injury to the domestic industry, emphasising factual evidence rather than making statements which are general and unsubstantiated.

Submissions should also address the question of possible remedial action should serious injury to the domestic industry be found by the Authority.

The Report

A report on matters that are the subject of the inquiry is provided to the Minister. Urgent action may be recommended only if:

- The importation of the goods is causing or will cause serious injury to the industry, and serious injury is not attributable to factors other than the importation of the goods; and
- It is not practicable for the industry to reduce the injury from the importation by other means.

The report of the Authority's inquiry is published.

Remedies

The Authority can recommend a range of measures be taken to alleviate serious injury to the domestic industry. These may include:

- The imposition or variation of any Customs duty, or the creation or removal of any exemption from duty;

- The restriction of the importation of the goods;
- Any other action the Authority considers appropriate.

Safeguard measures may not be greater than is necessary to prevent or remedy serious injury and facilitate adjustment, and may not remain in force longer than necessary.

The final decision on whether to impose a remedy and the nature and extent of any remedy is made by the Minister of Commerce.

International Obligations

World Trade Organisation

The WTO Agreement on Safeguards (WTO SG Agreement) provides the international framework of rules and obligations on which the New Zealand legislation is based.

New Zealand-Singapore Closer Economic Partnership Agreement

New Zealand and Singapore have agreed to dispense with safeguard action in relation to goods originating in either country. See <http://www.mfat.govt.nz/tradeagreements/cepsingdocs/singcep.html>.

New Zealand-Thailand Closer Economic Partnership Agreement

Existing WTO rights and obligations on global safeguard measures are maintained, but imports originating from Thailand may be excluded “if such imports are not a cause of serious injury or threat thereof”. See http://www.med.govt.nz/buslt/trade_rem/guides/thai-cep/.

Other Agreements

New Zealand has trade agreements with Australia, South Pacific Forum Island Countries, Canada and Malaysia, which contain provisions that relate to the measures that New Zealand may take to safeguard domestic industry from injurious imports from those countries.

Bilateral Transitional Safeguards

New Zealand-Thailand Closer Economic Partnership Agreement

If the reduction or elimination of a tariff under the CEP results in increased imports originating from Thailand of such an extent as to cause or threaten serious injury to a New Zealand industry, the tariff may be reinstated temporarily to a previous level to allow an industry to adjust.

Confidential Information

Both the Dumping and Countervailing Duties Act and the Temporary Safeguard Authorities Act include separate provisions dealing with the treatment of confidential information provided to the Ministry or to an Authority. The Ministry must ensure that confidential information is protected, but is also required to make available on request non-confidential information, including non-confidential summaries of confidential information, that is used in dumping and subsidy investigations or in safeguard inquiries.

The Ministry operates a Public File system for all investigations and inquiries. These files hold all non-confidential information relating to the inquiry. These files are available for viewing or copying.

Additional information on the treatment of confidential information is available from the Ministry.

Contact Information

Further information is also available from the Trade Remedies area of the Ministry of Economic Development website [www.med.govt.nz].

or

The Manager
Trade Remedies Group
Ministry of Economic Development
PO Box 1473
WELLINGTON

or

Trade Remedies Group
Ministry of Economic Development
33 Bowen Street
WELLINGTON

Telephone: +64-4-472 0030
Facsimile: +64-4-499 8508
Email: traderem@med.govt.nz