

# INDUSTRY SAFEGUARDS BILL

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## EXPLANATORY NOTE

THIS Bill provides for the appointment of Temporary Safeguard Authorities in the place of the Industries Development Commission, and substitutes a new Part VA in the Customs Act 1966 relating to anti-dumping and countervailing duties.

*Clause 1* relates to the Short Title and commencement. The Bill is to come into force on 1 April 1987.

## PART I

### TEMPORARY SAFEGUARD AUTHORITIES

*Clause 2* is the interpretation provision.

*Clause 3* enables the Minister to appoint such persons as the Minister thinks fit to be Temporary Safeguard Authorities or members of Temporary Safeguard Authorities for such terms, not exceeding 3 years, as the Minister thinks fit.

*Clause 4* provides that every Authority is to have certain powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908.

*Clause 5* provides that where it appears to the Minister that the importation of any goods has caused or may cause material injury to an industry that produces like goods, the Minister may request an Authority to undertake an inquiry in relation to the importation of those goods and to report—

- (a) Whether the industry has suffered or is likely to suffer material injury as a result of the importation of the goods having regard to the matters set out in the next clause:
- (b) If the industry has suffered or is likely to suffer such injury,—
  - (i) Whether urgent action is necessary to protect the industry in relation to the importation of the goods; and
  - (ii) If such action is considered necessary, the nature of the protection that is considered by the Authority to be appropriate in all the circumstances, and the extent and duration of such protection.

Every request by the Minister to an Authority is to be published in the *Gazette*.

*Clause 6: Subclause (1)* sets out the matters to be taken into account by an Authority in dealing with a request from the Minister under *clause 5* of the Bill.

*Subclause (2)* provides that any policies of the Government that are to be taken into account under *subclause (1)* are to be published in the *Gazette* and laid before the House of Representatives.

*Clause 7* provides that an Authority is to report to the Minister as soon as possible, but not later than 30 working days after the date on which it received the request for an inquiry.

If it is of the opinion that urgent action is necessary it may recommend that all or any of the following measures be taken:

- (a) The imposition or variation of any Customs duty or the creation or removal of any exemption from duty, including any duty or exemption from duty included in the Preferential Tariff, on any goods:
- (b) The restriction of the importation of the goods:
- (c) The provision of payment by the Crown to the industry by way of production bounty in such manner as the Authority specifies:
- (d) Any other action it considers appropriate.

The Authority is also to specify the period (not exceeding 12 months) during which the measures are to apply.

The Authority is to publish its report as soon as practicable after making its report to the Minister.

*Clause 8* provides for remuneration and travelling expenses.

*Clause 9* provides that the money for such remuneration and expenses shall be payable out of money appropriated by Parliament for the purpose.

*Clause 10* provides for privilege for an Authority and its officers.

*Clause 11* makes Authorities subject to the Official Information Act 1982.

*Clause 12* repeals the Industries Development Commission Act 1961 and its amendments.

## PART II

### AMENDMENTS TO CUSTOMS ACT 1966

*Clause 14* substitutes a new Part VA in the Customs Act 1966 relating to anti-dumping and countervailing duties.

The new *section 186A* is the interpretation provision.

*Section 186B* sets out the method for calculating the export price of any goods exported or intended to be exported to New Zealand.

*Section 186C* provides the method for determining the normal value of any goods exported or intended to be exported to New Zealand, and generally it is the price paid for like goods sold at arms length in the ordinary course of trade for home consumption in the country of export by the exporter, or, if not so sold by the exporter, by other sellers of like goods.

*Subclauses (2) and (7)* set out the methods of calculating that value when the general rule is not applicable.

*Section 186D* provides that where the Minister is satisfied that sufficient information has not been supplied to enable the export price or the normal value to be ascertained under the previous 2 sections, the Minister may determine the export price or the normal value, having regard to all available information.

*Section 186E* provides for the method of calculating the amount of the subsidy in relation to any subsidised goods.

*Section 186F* provides for the Minister to determine whether any material injury to an industry has been or is being caused or threatened or whether the establishment of an industry has been or is being materially retarded by the dumping or subsidising of goods exported or intended to be exported to New Zealand from another country.

*Section 186G* provides for the contents of any notice given under this Part of the principal Act.

*Section 186H: Subclause (1)* provides that the Comptroller, on receipt of a complaint from the industry, initiate an investigation to determine both the existence and effect of any alleged dumping or subsidising of any goods on being satisfied that sufficient evidence has been provided that—

- (a) The goods exported or intended to be exported to New Zealand are being dumped or subsidised; and
- (b) By reason thereof material injury to an industry has been or is being caused or threatened or the establishment of an industry has been or is being materially retarded.

Provision is made for the giving of notice of the investigation to intended parties, and for the giving of evidence, both in writing and orally.

*Section 186I* provides the Minister may at any time, and the Comptroller may at any time before any determination is made by the Minister, terminate the investigation on being satisfied that—

- (a) There is insufficient evidence of dumping or subsidising to justify proceeding with the investigation; or
- (b) There is insufficient evidence that material injury to an industry has been or is being caused or threatened or the establishment of an industry has been or is being materially retarded by means of the subsidising or dumping of the goods.

Notice is to be given of the termination of the investigation.

Provision is made for the termination to be cancelled and the investigation to be reopened in certain circumstances.

*Section 186J* provides for the Minister to make a provisional determination as to whether or not the goods have been dumped or subsidised within 60 days of the start of the investigation or, when the Minister declares that, by reason of—

- (a) The complexity or novelty of the issues presented by the investigation; or
- (b) The variety of goods or number of persons involved in the investigation; or
- (c) The difficulty of obtaining satisfactory evidence in the investigation; or
- (d) Any other circumstances that, in the opinion of the Minister, makes it unusually difficult to make the preliminary determination within 60 days,—

the preliminary determination may be made within 90 days from the date of the initiation of the investigation.

When the preliminary determination has been made by the Minister, the Comptroller is to continue the investigation, and the Minister may impose provisional anti-dumping or countervailing duties.

Notice is to be given of the preliminary determination.

*Section 186K* provides that within 90 days after the making of the preliminary determination, the Minister is to make a final determination as to whether or not the goods have been dumped or subsidised.

Notice of the final determination is to be given.

Where the determination is made before the goods have been imported, the Minister may redetermine the export price and the normal value of the goods

within 90 days after the date of their importation and amend the final determination accordingly.

*Section 186L* provides for the imposition of anti-dumping duty or countervailing duty where the Minister has made a final determination that any goods imported or intended to be imported are being dumped or subsidised and that material injury to an industry has been or is being caused or threatened or the establishment of an industry has been or is being materially retarded.

The duty shall be a rate or amount determined by the Minister,—

- (a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and
- (b) In the case of subsidised goods, not exceeding the amount of subsidy on the goods.

In imposing the duty the Minister is to have regard to ensuring that the amount of anti-dumping or countervailing duty in respect of these goods is not greater than is necessary to prevent the material injury or a re-occurrence 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 requires.

The Minister may revoke any notice imposing anti-dumping duty or countervailing duty, and is to review the need for the anti-dumping duty or countervailing duty where warranted on the Minister's initiative, or if an interested party so requests and submits positive evidence substantiating the need for review.

Any anti-dumping duty or countervailing duty is to remain in force only so long as and to the extent necessary to counteract the injurious effects of the dumping or subsidisation.

*Section 186M* provides for the Minister, instead of imposing anti-dumping duty or countervailing duty, to accept an undertaking that the exporter will conduct future export trade of like goods to avoid causing or threatening material injury to an industry or materially retarding the establishment of an industry.

*Section 186N* provides that where the Minister has made a preliminary determination, the Minister may direct that payment of duty imposed on those goods is to be secured in accordance with Part IX of the principal Act in such amount as the Minister determines is necessary.

*Section 186O* provides for the circumstances in which anti-dumping and countervailing duty may be imposed retrospectively prior to the date of the final determination of the Minister.

*Section 186P* provides for the application of the provisions of this Part where a third country is affected by the importation of dumped goods into New Zealand.

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*Hon. David Caygill*

## INDUSTRY SAFEGUARDS

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### A BILL INTITULED

#### **An Act to provide for safeguards to industry**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Industry Safeguards Act 1986.

(2) This Act shall come into force on the **1st day of April 1987**.

## PART I

## TEMPORARY SAFEGUARD AUTHORITIES

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Authority” means a Temporary Safeguard Authority 5  
established under **section 3** of this Act:

“Customs duty” means any duty within the meaning of  
the Customs Act 1966:

“Customs tariff” has the same meaning as defined in  
section 2 of the Customs Act 1966: 10

“Industry”, in relation to any goods, means—

(a) The New Zealand producers of like goods; or

(b) Such New Zealand producers of like goods  
whose collective output constitutes a major  
proportion of the New Zealand production of like 15  
goods;—

but does not include importers of those goods:

“Like goods”, in relation to any goods, means—

(a) Other goods that are like those goods in all  
respects: 20

(b) Other goods which have characteristics closely  
resembling those goods:

“Minister” means the Minister of Trade and Industry:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter 25  
Monday, Anzac Day, Labour Day, the Sovereign’s  
birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th  
day of December in any year and ending with the  
15th day of January in the following year. 30

**3. Establishment of Authorities**—(1) The Minister may  
from time to time appoint such persons as the Minister thinks  
fit to be Temporary Safeguard Authorities for the purposes of  
this Act.

(2) Any person appointed as an Authority or as a member of 35  
an Authority shall be appointed for such term, not exceeding 3  
years, as may be specified in the instrument of appointment of  
that Authority, and may from time to time be reappointed, or  
may at any time be removed from office by the Minister for  
disability, bankruptcy, neglect of duty, or misconduct, proved 40  
to the satisfaction of the Minister, or may at any time resign  
the office by writing addressed to the Minister.

(3) No person appointed under this section shall exercise any functions of an Authority in respect of any matter in which that person has, directly or indirectly, any pecuniary interest apart from any interest in common with the public.

5 (4) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason only of that person being an Authority or a member of an Authority.

10 (5) The Department of Trade and Industry shall be responsible for ensuring that each Temporary Safeguard Authority is provided, whether by secondment or otherwise, with such secretarial and other services as are necessary to enable the Authority to carry out any inquiry under this Act  
15 and to report as efficiently and expeditiously as possible.

**4. Authority to have certain powers of Commission of Inquiry**—For the purposes of an inquiry pursuant to **section 5(1)** of this Act, sections 4A, 4B, 4C, 4D, 5, 6, 7, 8, and 9 of the Commissions of Inquiry Act 1908 shall apply to every  
20 Authority as if it were a Commission of Inquiry established under that Act.

**5. Reference of matters to Authority**—(1) Where it appears to the Minister that the importation of any goods has caused or may cause material injury to an industry that  
25 produces like goods, the Minister may request an Authority to undertake an inquiry in relation to the importation of the goods and to report on the following matters:

(a) Whether the industry has suffered or is likely to suffer material injury as a result of the importation of the  
30 goods having regard to the matters set out in **section 6** of this Act; and

(b) If the industry has suffered or is likely to suffer such injury,—

(i) Whether urgent action is necessary to protect  
35 the industry in relation to the importation of the goods; and

(ii) If such action is considered necessary, the nature of the protection that is considered by the Authority to be appropriate in all the circumstances, and the extent and duration of such protection.  
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(2) The Minister shall cause every request made to an Authority under **subsection (1)** of this section to be published in

the *Gazette* as soon as practicable after making it, and shall lay a copy of it before the House of Representatives.

(3) Subject to **section 3 (3)** of this Act, on receipt of the request the Authority shall forthwith undertake the inquiry.

**6. Matters to be taken into consideration by Authority**—(1) The Authority shall, in determining for the purposes of **section 5 (1) (a)** of this Act whether an industry has suffered or is likely to suffer material injury as a result of the importation of goods, have regard to the following matters:

(a) The extent to which there has been a significant increase in the volume of imports of the goods, either in absolute terms, or in relation to production or consumption in New Zealand; and

(b) The extent to which the effect of the increased importation of the goods is significantly to depress prices for the goods in New Zealand or significantly to prevent price increases for the goods which otherwise would have occurred; and

(c) The economic impact of the increased importation of the goods on the industry including—

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

(ii) Factors affecting domestic prices; and

(iii) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments; and

(d) Any policies of the Government as transmitted in writing from time to time to the Authority by the Minister.

(2) The Minister shall cause every statement of policy transmitted to an Authority under **subsection (1) (d)** of this section to be published in the *Gazette* as soon as practicable after transmitting it.

**7. Report by Authority**—(1) An Authority which undertakes an inquiry under **section 5** of this Act shall as soon as practicable, but not later than 30 working days after the date on which it received the request for the inquiry, report to the Minister on the matters that are the subject of the inquiry.

(2) An Authority may report to the Minister that urgent action is necessary in relation to the importation of goods only if it is satisfied, having regard to the matters set out in **section 6 (1)** of this Act, that—



- (a) The importation of the goods is causing or will cause material injury to the industry; and
- (b) That material injury relates solely to the importation of those goods and to no other circumstances; and
- 5 (c) It is not practicable for the industry to reduce the injury resulting from the importation by other measures of adjustment to such extent that urgent action would be unnecessary.

(3) If the Authority reports that urgent action is necessary to  
10 protect the industry from material injury in relation to the importation of the goods, it may recommend that any or all of the following measures be taken:

- 15 (a) The imposition or variation of any Customs duty or the creation or removal of any exemption from duty, including any duty or exemption from duty in the Preferential Tariff (as defined in section 2 (1) of the Customs Act 1966):
- (b) The restriction of the importation of the goods under the  
20 Customs Act 1966 or the Trade and Industry Act 1956:
- (c) The provision of payments by the Crown to the industry by way of production bounty in such manner as the Authority shall specify:
- (d) Any other action it considers appropriate.

25 (4) In making any such recommendation the Authority shall also report what should be the rate, extent, and duration (being not longer than 12 months from the date of imposition) of any measures recommended by the Authority.

30 (5) Subject to **subsection (6)** of this section the Authority shall, as soon as practicable after making its report to the Minister, cause the report to be published.

(6) Nothing in **subsection (5)** of this section shall require the Authority to disclose information which could properly be withheld under the Official Information Act 1982.

35 **8. Remuneration and travelling expenses**—(1) Every Authority established under this Act is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

40 (2) There shall be paid to members of Authorities remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

**9. Money to be appropriated by Parliament for the purposes of this Act**—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose. 5

**10. Proceedings privileged**—(1) No proceedings, civil or criminal, shall lie against an Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Authority acted without reasonable care or in bad faith. 10

(2) No proceedings, civil or criminal, shall lie against any person who is an Authority, or any officer of an Authority, for anything that person may do or say or fail to do or say in the course of the operations of the Authority, unless it is shown that that person acted in bad faith. 15

**11. Consequential amendments**—The Official Information Act 1982 is hereby consequentially amended by omitting from the First Schedule the following items:

“The Emergency Protection Authorities appointed for the purposes of the Industries Development Commission Act 1961; 20

“The Industries Development Commission; and inserting, in its appropriate alphabetical order, the following item:

“Temporary Safeguard Authorities appointed under Part I of the Industry Safeguards Act 1986.” 25

**12. Repeals**—The enactments set out in the Schedule to this Act are hereby consequentially repealed.

## PART II

### AMENDMENTS TO CUSTOMS ACT 1966 30

**13. This Part to be read with Customs Act 1966**—This Part of this Act shall be read together with and deemed part of the Customs Act 1966\* (in this Part referred to as the principal Act).

**14. New Part VA substituted**—(1) The principal Act is hereby amended by repealing Part VA (as substituted by 35

\*R.S. Vol. 2, p. 57

Amendments: 1979, No. 7, Part I; 1979, No. 137, Part I; 1980, No. 5, Part I; 1980, No. 35, Part I; 1981, No. 2, Part I; 1981, No. 6, Part I; 1981, No. 20; 1982, No. 9, Part I; 1982, No. 112, Part I; 1982, No. 126; 1983, No. 5, Part I; 1983, No. 41, Part I; 1984, No. 6, Part I; 1985, No. 145, Part I; 1986, No. 44

section 11 of the Customs Amendment Act (No. 2) 1983), and substituting the following Part:

“PART VA

“DUMPING AND COUNTERVAILING DUTIES

5 “186A. **Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

10 “‘Dumping’, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Part of this Act, and ‘dumped’ shall have a corresponding meaning:

15 “‘Industry’, in relation to any goods, means—

“(a) The New Zealand producers of like goods:

“(b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods;—

20 but does not include importers of those goods:

“‘Like goods’, in relation to any goods, means—

“(a) Other goods that are like those goods in all respects; or

25 “(b) In the absence of such goods, other goods which have characteristics closely resembling those other goods:

“‘Subsidised goods’ means—

30 “(a) Goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of which a subsidy has been or will be paid, granted, authorised, or otherwise provided, directly or indirectly, by the Government of a country other than New Zealand:

35 “(b) Goods that are disposed of at a loss by the government of a country other than New Zealand,— and includes any goods in which, or in the production, manufacture, growth, or processing of which, goods described in paragraph (a) or paragraph (b) of this definition are incorporated, consumed, used, or otherwise employed:

40 “‘Subsidy’ 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 the Government of a country other than New Zealand;— 5

but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback. 10

“(2) For the purposes of this Part of this Act, a purchase or sale of goods shall not be treated as an arms length transaction if— 15

“(a) There is any consideration payable for or in respect of the goods other than their price; or

“(b) The price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or 20

“(c) In the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price. 25

“(3) Where goods are exported or intended to be exported to New Zealand and are purchased by the importer from the exporter (whether before or after exportation) for a particular price and the Minister is satisfied, after having regard to— 30

“(a) The amount of the price paid or to be paid for the goods by the importer; and

“(b) Such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and 35

“(c) The likelihood that the amounts referred to in **paragraph (a) and paragraph (b)** of this subsection will be able to be recovered within a reasonable time; and 40

“(d) Such other matters as the Minister considers relevant,— that the importer, whether directly or through an associate, sells those goods in New Zealand (whether in the condition in which they were imported or otherwise) at a loss, the Minister

may deem the sale of those goods as indicating that the buyer or an associate of the buyer will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price for the purposes of **subsection (2) (c)** of this section.

“(4) For the purposes of this Part of this Act, persons shall be deemed to be associates of each other only if—

- “(a) They are officers or directors of one another’s businesses; or
- 10 “(b) They are legally recognised partners in business; or
- “(c) They are employer and employee; or
- “(d) Any person directly or indirectly owns, controls, or holds 5 percent or more of the outstanding voting stock or shares of both of them; or
- 15 “(e) One of them directly or indirectly controls the other; or
- “(f) Both of them are directly or indirectly controlled by a third person; or
- “(g) Together they directly or indirectly control a third person; or
- 20 “(h) They are members of the same family.

“(5) For the purposes of **subsection (4) (h)** of this section, persons shall be deemed to be members of the same family if—

- 25 “(a) They are connected by blood relationship within the fourth degree of relationship; or
- “(b) They are married to one another or if one is married to a person who is connected within the fourth degree of relationship to the other; or
- 30 “(c) One has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other.

“(6) A reference in this Part of this Act to the amount of the export price of goods, or to the amount of the normal value of goods, shall, where that amount is not expressed in New Zealand currency, be read as a reference to the equivalent amount in New Zealand currency.

“(7) For the purposes of this Act, where, during the exportation of goods to New Zealand, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

“186B. **Export price**—(1) Subject to this section, for the purposes of this Part of this Act, the export price of any goods exported or intended to be exported to New Zealand which

have been purchased by the importer from the exporter shall be—

- “(a) Where the purchase of the goods by the importer was an arms length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or 5
- “(b) Where the purchase of the goods by the importer was not an arms length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not an associate of the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts: 10 15
- “(i) The amount of any duties and taxes imposed under this Act or any other Act; and
- “(ii) The amount of any costs, charges, or expenses arising in relation to the goods after exportation; and 20
- “(iii) The amount of the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies as the rate of profit on the sale by the importer. 25

“(2) Where—

- “(a) Goods are or are to be shipped to New Zealand on consignment and there is no known purchaser in New Zealand for the goods; or 30
- “(b) There is no exporter’s sale price or no price at which the importer or a person not associated with the importer, has purchased or agreed to purchase the goods,—

the export price, for the purposes of this Part of this Act, shall be determined in such manner as the Minister considers appropriate having regard to all the circumstances of the exportation. 35

“186c. **Normal value**—(1) Subject to this section, for the purposes of this Part of this Act, the normal value of any goods exported or intended to be exported to New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like 40

goods are not so sold by the exporter, by other sellers of like goods.

“(2) Where the Minister is satisfied that—

5 “(a) The normal value of goods exported or intended to be exported to New Zealand cannot be determined under **subsection (1)** of this section because of—

“(i) The absence of sales that would be relevant for the purpose of determining a price under that subsection; or

10 “(ii) Sales in the relevant market are not suitable for determining a price under that subsection; or

15 “(b) Where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under **subsection (1)** of this section,—

20 the normal value for the purposes of this Part of this Act shall be the sum of—

“(c) Such amount as determined by the Minister to be the cost of production or manufacture of the goods in the country of export; and

25 “(d) On the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—

30 “(i) Such amounts as the Minister determines would be the delivery charges and other charges incurred in the sale; and

“(ii) An amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale:

35 “Provided that the Minister may, in the Minister’s absolute discretion, determine that the normal value for the purposes of this Part of this Act, shall be the price that, by reason of the quantity of goods, being like goods sold at arm’s length in the ordinary course of trade in the country of export for export to  
40 the third country, is representative of the price paid in such sales of those goods and may be the highest price paid for such like goods.

“(3) Subject to **subsection (6)** and **subsection (7)** of this section, where the Minister is satisfied that it is inappropriate to

ascertain the normal value of goods in accordance with the foregoing provisions of this section by reason that the Government of the country of export—

“(a) Has a monopoly, or substantial monopoly, of the trade of the country; and 5

“(b) Determines or substantially influences the domestic price of goods in that country,—

the normal value of the goods for the purposes of this Part of this Act shall be a value ascertained in accordance with whichever of the following paragraphs the Minister determines 10 is appropriate and reasonable in the circumstances of the case:

“(c) A value equal to the price that, by reason of the quantity of goods, being like goods produced or manufactured in a country determined by the Minister and sold for export from that country to 15 the other country in the ordinary course of trade, is representative of the price paid in such sales of the like goods, and may be the highest price paid for the like goods:

“(d) A value equal to the price determined by the Minister to 20 be representative of the price of like goods produced or manufactured in a country determined by the Minister and sold for export from that country to another country in the ordinary course of trade: 25

“(e) A value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country: 30

“(i) Such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country:

“(ii) Such amounts as the Minister determines are the delivery charges and other costs necessarily 35 incurred in selling the like goods:

“(iii) An amount calculated in accordance with such rate as the Minister determines is to be regarded as the rate of profit on the sale of the like goods: 40

“(f) A value equal to the price payable for like goods produced or manufactured in New Zealand and sold for home consumption in the ordinary course of trade in New Zealand.



“(4) Where the normal value of goods exported or intended to be exported to New Zealand is the price paid for like goods and that price and the export price of the goods exported or intended to be exported to New Zealand,—

- 5     “(a) Relate to sales occurring at different times; or  
       “(b) Are not in respect of identical goods; or  
       “(c) Are modified in different ways by taxes or the terms or circumstances of the sales to which they relate,—  
 that price paid for like goods is to be adjusted as determined  
 10 by the Minister, so that those differences do not affect its comparison with that export price.

“(5) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with **subsection (2) (a) or (b) or subsection (3) (e)**, the Minister shall make such adjustments  
 15 as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

“(6) Where—

- 20     “(a) The actual country of export of goods exported or intended to be exported to New Zealand is not the country of origin of the goods; and  
       “(b) The Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—

25 the Minister may direct that the normal value of the goods shall be so ascertained.

“(7) Where the Minister is satisfied, in relation to goods exported or intended to be exported to New Zealand that—

- 30     “(a) The price paid for like goods—  
       “(i) Sold for home consumption in the country of export in sales that are arms length transactions; or  
       “(ii) Sold in the country of export for export to a third country in sales that are arms length transactions,—  
 35 is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of—  
       “(iii) Such amount as the Minister determines to be the cost of production or manufacture of the like goods in the country of export; and  
 40       “(iv) Such other amounts as the Minister determines to be the costs necessarily incurred in the sale of the like goods by the seller of the goods; and

“(b) It is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of that paragraph within a reasonable period of time,—  
the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade. 5

“186D. **Export price and normal value**—(1) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under **section 186b** of this Act, or the normal value of goods to be ascertained under **section 186c** of this Act, the normal value or export price, as the case may be, shall be such amount as is determined by the Minister having regard to all available information. 10

“(2) For the purposes of **subsection (1)** of this section, the Minister may disregard any information that the Minister considers to be unreliable. 15

“186E. **Amount of the subsidy**—(1) In this Act the expression ‘amount of the subsidy’, in relation to any subsidised goods, means the amount of the subsidy on the goods determined in such manner as the Minister specifies. 20

“(2) In determining the amount of the subsidy the following amounts shall be deducted:

“(a) Any application fee, or other costs necessarily incurred in order to qualify for, or to receive the benefit of, the subsidy. 25

“(b) Any export taxes, duties, or other charges levied on the export of the goods to New Zealand specifically intended to offset the subsidy.

“186F. **Material injury to industry**—In determining, for the purposes of this Part of this Act, whether or not any material injury to an industry has been or is being caused or threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or the subsidising of goods exported or intended to be exported to New Zealand from another country, the Minister may, where the Minister considers it appropriate, and without limiting the matters the Minister may consider, have regard to the following matters: 30 35

“(a) The extent to which there has been a significant increase in the volume of dumped or subsidised imports of the goods either in absolute terms or in relation to production or consumption; and 40

- “(b) The extent to which the effect of the dumped or subsidised imports is significantly to depress prices for the goods in New Zealand or significantly to prevent price increases for the goods which otherwise would have occurred; and
- 5 “(c) The economic impact of the dumped or subsidised imports on the industry including—
- “ (i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
- 10 “ (ii) Factors affecting domestic prices; and
- “ (iii) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments; and
- 15 “(d) In respect of the subsidising of any agricultural product, any increase in the financial burden on any New Zealand Government agricultural support programme.
- 20 “186G. **Forms of notice**—For the purposes of this Part of this Act, reference to a notice means a notice—
- “ (a) Specifying the reasons for the giving of the notice; and
- “ (b) Given to—
- 25 “ (i) The Government or Governments of the country or countries of export of the goods which are or have been under investigation by the Comptroller pursuant to this Part of this Act; and
- “ (ii) Exporters and importers known by the Comptroller to have an interest in those goods; and
- 30 “ (iii) The complainant in relation to those goods; and
- “ (iv) Where the Minister is taking action under **section 186P** of this Act, the Government of the third country on behalf of whom the Minister is taking action; and
- 35 “ (c) Published in the *Gazette*.
- “186H. **Initiation and subsequent investigation**—(1) The Comptroller may, on receipt of a complaint from the industry, initiate an investigation to determine both the existence and
- 40 effect of any alleged dumping or subsidising of any goods on being satisfied that sufficient evidence has been provided that—
- “ (a) The goods exported or intended to be exported to New Zealand are being dumped or subsidised; and

“(b) By reason thereof material injury to an industry has been or is being caused or threatened or the establishment of an industry has been or is being materially retarded.

“(2) Where the Comptroller initiates an investigation, pursuant to **subsection (1)** of this section, in respect of the dumping or subsidising of goods, notice of the initiation of the investigation shall be given. 5

“(3) Upon the initiation of an investigation by the Comptroller pursuant to **subsection (1)** of this section and thereafter during the course of the investigation, evidence of the dumping or subsidisation and of the material injury to an industry shall be considered simultaneously. 10

“(4) The Comptroller, after initiating an investigation pursuant to **subsection (1)** of this section, shall ensure that all interested parties to the investigation are given reasonable opportunity— 15

“(a) To present in writing all evidence relevant to the investigation, and, upon justification being shown, to present such evidence orally: 20

“(b) Subject to the Official Information Act 1982, to have access to all non-confidential information relevant to the presentation of their case:

“(c) On request being made, to meet those parties with adverse interests in order to present opposing views. 25

“(5) The Comptroller may request parties who have provided confidential information to furnish—

“(a) A non-confidential summary of the information; or

“(b) If it is claimed that the information is not susceptible of such summary, a statement of the reasons why such summary is not possible,— 30

and the Comptroller may disregard any information for which the party submitting it fails to provide either a satisfactory summary or satisfactory reason why such summary cannot be provided. 35

“186I. **Termination of investigations**—(1) Where the Minister, at any time before making a final determination of dumping or subsidising, or the Comptroller, at any time before a preliminary determination of dumping or subsidising is made by the Minister, is satisfied in respect of some or all of the goods under investigation, that— 40

“(a) There is insufficient evidence of dumping or subsidising to justify proceeding with the investigation; or

5 “(b) There is insufficient evidence that material injury to a New Zealand industry has been or is being caused or threatened or the establishment of a New Zealand industry has been or is being materially retarded by means of the subsidising or dumping of the goods—

the Minister or, as the case may be, the Comptroller, shall—

“(c) Terminate the investigation with respect to those goods; and

10 “(d) Give notice of such termination.

“(2) Where—

15 “(a) Any investigation is terminated under **subsection (1)** of this section, and it is subsequently ascertained that information supplied affecting the investigation was incorrect or did not disclose material facts, and that the information is of such nature as materially to affect the decision to terminate the investigation; or

20 “(b) Any investigation is terminated pursuant to an undertaking given by an exporter under **section 186M (1)** of this Act and the exporter violates that undertaking,—

the Comptroller may reopen the investigation, and all the provisions of this Part of this Act as to time limits shall apply as if the date of the reopening of the investigation were the date 25 of the commencement of an investigation.

“(3) Notice shall be given of the reopening of any investigation under **subsection (2)** of this section.

30 “186J. **Preliminary determination**—(1) Except where the investigation has been terminated pursuant to **section 186I** of this Act, within 60 days after an investigation has been initiated by the Comptroller pursuant to **section 186H** of this Act, the Minister shall make a preliminary determination, on the basis of the information made available during the investigation, if the Minister has reasonable cause to believe, in 35 relation to the importation or intended importation into New Zealand of goods, that they are goods in respect of which the Minister may direct the imposition of an anti-dumping or countervailing duty in accordance with **section 186L** of this Act.

40 “(2) Notwithstanding **subsection (1)** of this section where the Minister declares that by reason of—

“(a) The complexity or novelty of the issues presented by the investigation; or

“(b) The variety of goods or number of persons involved in the investigation; or

“(c) The difficulty of obtaining satisfactory evidence in the investigation; or

“(d) Any other circumstances specified in the notice that, in the opinion of the Minister, makes it unusually difficult for the Minister to make the preliminary determination referred to in **subsection (1)** of this section within 60 days,—

that preliminary determination may be made within 90 days from the date of the initiation of the investigation.

“(3) Where the preliminary determination has been made by the Minister, the Comptroller shall continue the investigation and proceed to a final determination in accordance with **sections 186k and 186l** of this Act, and the Minister may impose provisional duties in accordance with **section 186n** of this Act.

“(4) The Minister’s preliminary determination shall be given by notice.

“**186k. Final determination**—(1) Subject to **section 186l** of this Act, within 90 days after the making of a preliminary determination by the Minister in accordance with **section 186j** of this Act, the Minister shall make a final determination as to whether or not, in relation to the importation or intended importation of goods into New Zealand, they are goods in respect of which the Minister may impose an anti-dumping or countervailing duty in accordance with **section 186l** of this Act.

“(2) The final determination of the Minister shall be given by notice.

“(3) Where, pursuant to **subsection (1)** of this section, a final determination in respect of any goods has been made by the Minister prior to the importation of the goods, the Minister may revise the normal value or export price of the goods within 90 days after the date of importation of the goods, and may make such changes to that final determination as the Minister considers necessary to take account of that revision.

“**186L. Anti-dumping and countervailing duties**—(1) Where the Minister, having made a determination under **section 186j** or **section 186k** of this Act, is satisfied in relation to the importation into New Zealand of goods that—

“(a) The goods are being dumped or subsidised; and

“(b) 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,—

the Minister may by a notice given pursuant to **section 186k** of this Act state that this section applies to those goods, and—

“(c) There shall be charged, collected, and paid on demand of the Collector on the importation of those goods which are dumped a special duty of Customs to be known as anti-dumping duty; and

5 “(d) There shall be charged, collected, and paid on demand of the Collector on the importation of those goods which are subsidised a special duty of Customs to be known as countervailing duty.

“(2) The anti-dumping duty or countervailing duty in the  
10 case of goods to which this section applies shall be a rate or amount determined by the Minister—

“(a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and

15 “(b) In the case of subsidised goods, not exceeding the amount of subsidy on the goods.

“(3) In exercising the discretion under **subsection (2)** of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing  
20 duty in respect of these goods is not greater than is necessary to prevent the material injury or a re-occurrence 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.

25 “(4) The Minister, may, by notice, revoke any notice imposing anti-dumping duty or countervailing duty, and upon such revocation the dumping duty or countervailing duty imposed by that notice shall cease to be payable.

“(5) The Minister shall review the need for the continued  
30 imposition of the anti-dumping duty or countervailing duty where warranted on the Minister’s own initiative, or if an interested party so requests and submits positive evidence substantiating the need for review.

35 “(6) An anti-dumping or a countervailing duty imposed pursuant to this section shall remain in force only so long as and to the extent necessary to counteract the injurious effects of the dumping or subsidisation.

“186M. **Price undertakings**—(1) Where, in relation to the exportation of any consignment of goods to New Zealand, the  
40 Comptroller has initiated an investigation pursuant to **section 186H** of this Act, the Minister may terminate consideration of that consignment if the Minister is given and accepts an undertaking by the exporter that the exporter will so conduct future export trade to New Zealand of like goods to the goods

in the consignment to avoid causing or threatening material injury to an industry or materially retarding the establishment of an industry.

“(2) The price increases in an undertaking accepted by the Minister shall not exceed the difference between the export price of the goods and their normal value or the amount of subsidisation, as the case may be. 5

“(3) The Minister may be given and accept any amendment to an undertaking because of altered circumstances.

“(4) If the Minister accepts an undertaking the investigation of the extent of injury to an industry shall nevertheless be completed if the exporter so desires or the Minister so decides. 10

“(5) If an investigation referred to in **subsection (4)** of this section is completed and no determination of material injury, threat thereof, or material retardation to the establishment of an industry is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury is attributable to a significant degree to the existence of the undertaking, in which case the Minister may require that the undertaking be maintained for such reasonable period as the Minister may determine. 15 20

“(6) The Minister may require any exporter from whom undertakings have been accepted to provide information relevant to the fulfilment of the undertaking.

“(7) The Minister shall review the need for the continuation of an undertaking where warranted on the Minister’s own initiative, or if an interested party so requests and submits positive evidence substantiating the need for review. 25

“(8) Undertakings shall remain in force only so long and to the extent necessary to counteract the injurious effects of the dumping or subsidisation. 30

“(9) If an investigation is terminated in accordance with **subsection (1)** of this section, notice of the termination shall be given.

“186N. **Provisional measures**—(1) Where the Minister has made a preliminary determination pursuant to **section 186J** of this Act, the Minister may by notice give a provisional direction that payment of duty in respect of those goods shall be secured in accordance with **Part IX** of this Act in such amount as the Minister may determine is necessary to prevent material injury being caused during the period of investigation. 35 40



“(2) A provisional direction imposed under **subsection (1)** of this section shall in all cases cease to have effect following the final determination made by the Minister pursuant to **section 186k** of this Act.

5 “(3) When any provisional direction given under **subsection (1)** of this section ceases to have effect any security given pursuant to the provisional direction shall be released, except to the extent that duty is payable pursuant to a direction given under **section 186l** of this Act.

10 “(4) Where the amount of dumping duty or countervailing duty imposed pursuant to **section 186l** of this Act, the amount of the excess may be remitted by the Minister.

“186o. **Retrospective measures**—(1) Anti-dumping duty and countervailing duty, and provisional measures, shall only  
15 be applied to goods which are entered for home consumption after the decision taken by the Minister in **section 186l** or, as the case may be, **section 186n** of this Act came into force, except as provided by this section.

“(2) Where a final determination of material injury to an  
20 industry (but not of a threat thereof or of material retardation to the establishment of an industry) is made by the Minister, or in the case of a final determination of threat of material injury where the effect of the dumped or subsidised goods would, in the absence of provisional measures, have led to a finding of  
25 material injury, anti-dumping duty or countervailing duty, as the case may require, may be levied retrospectively for the period for which the provisional measures, if any, have been applied.

“(3) Where the Minister determines—

30 “(a) In respect of dumped goods—

“(i) Either that there is a history of dumping causing material injury or that the importer was or should have been aware that the exporter practises dumping and that such dumping would cause  
35 injury; and

“(ii) That the material injury is caused by massive dumped imports of a product in a relatively short period to such an extent that in order to preclude it recurring the Minister is of the opinion that it appears necessary to levy a dumping duty  
40 retrospectively:

“(b) In the case of subsidised goods, in critical circumstances, where the Minister determines that material injury which is difficult to repair is caused by massive

imports, in a relatively short period, of goods benefiting from export subsidies and where it is deemed necessary, in order to preclude the recurrence of such material injury it is necessary to impose a countervailing duty retrospectively,— 5

the Minister may levy an anti-dumping or countervailing duty, as the case may be, on goods which were entered for consumption not more than 90 days prior to the date of the application of provisional measures.

“(4) Where an exporter from whom the Minister has accepted an undertaking pursuant to **section 186M** of this Act violates the undertaking and the Minister, in accordance with **section 186N** of this Act, levies provisional duties, anti-dumping duty or countervailing duty may be levied in accordance with **section 186L** of this Act on goods entered for home consumption not more than 60 days before the application of the provisional measures, except that such retrospective duty shall not apply to goods that have been entered for home consumption before the date of the violation of the undertaking by the exporter. 20

“186P. **Third country anti-dumping duty**—Where the Minister is satisfied that, in relation to the importation into New Zealand of goods produced or manufactured in another country, that—

“(a) The amount of the export price of the goods is less than the normal value of the goods; and 25

“(b) By reason thereof material injury to a domestic industry of a third country has been or is being caused or threatened or the establishment of a domestic industry of a third country has been or is being materially retarded,— 30

the Minister may, if requested by the Government of the third country to do so, by notice declare that the foregoing provisions of this Part of this Act shall, with all necessary modifications, apply with respect to the effect of those goods on that third country's domestic industry in the same manner as they apply with respect to the effect of those goods on a New Zealand industry, and the Minister may impose anti-dumping duty accordingly.” 35

(2) The Customs Acts Amendment Act (No. 2) 1983 is hereby consequentially amended by repealing section 11. 40

**Section 12**

**SCHEDULE**

**ENACTMENTS REPEALED**

- 1961, No. 123—The Industries Development Commission Act 1961  
(Reprinted 1975, Vol. 3, p. 2039).
- 1964, No. 113—The Industries Development Commission Amendment Act  
1964 (Reprinted 1975, Vol. 3, p. 2054).
- 1965, No. 31—The Industries Development Commission Amendment Act  
1965 (Reprinted 1975, Vol. 3, p. 2054).
- 1967, No. 52—The Industries Development Commission Amendment Act  
1967 (Reprinted 1975, Vol. 3, p. 2055).
- 1970, No. 37—The Industries Development Commission Amendment Act  
1970 (Reprinted 1975, Vol. 3, p. 2056).
- 1971, No. 136—The Industries Development Commission Amendment Act  
1971 (Reprinted 1975, Vol. 3, p. 2056).
- 1975, No. 33—The Industries Development Commission Amendment Act  
1975 (Reprinted 1975, Vol. 3, p. 2057).
- 1979, No. 55—The Industries Development Commission Amendment Act  
1979.
- 1982, No. 80—The Industries Development Commission Amendment Act  
1982.