

[AS REPORTED FROM THE COMMERCE AND MARKETING
COMMITTEE]

House of Representatives, 2 April 1987.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. David Caygill

INDUSTRY SAFEGUARDS

ANALYSIS

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A BILL INTITULED

An Act to provide for safeguards to industry

BE IT ENACTED by the Parliament of New Zealand as follows:

No. 99—2

Price \$1.50

incl. GST \$1.65

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

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

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(2) Part II of this Act shall apply to investigations initiated under section 186H of the Customs Act 1966 (as inserted by section 13 of this Act) on or after the date on which this Act receives the Governor-General's assent.

PART I

TEMPORARY SAFEGUARD AUTHORITIES

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

“Authority” means a Temporary Safeguard Authority 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:

“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 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:

(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 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) 3rd day of January in the following year.

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.

5 (2) Any person appointed as an Authority or as a member of 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
10 may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved 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
15 person has, directly or indirectly, any pecuniary interest apart from any interest in common with the public.

(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
20 of that person being an Authority or a member of an Authority.

(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
25 enable the Authority to carry out any inquiry under this Act 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
30 Commissions of Inquiry Act 1908 shall apply to every 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
35 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 the goods and to report on the following matters:

40 (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 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 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.

(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.

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(4) The Authority shall, in such manner as it thinks fit, call for submissions from persons having an interest in the matters that are the subject of the inquiry and may specify a date by which any submissions must be received by the Authority.

(5) The Authority shall, in the course of the inquiry, consider any submissions received in response to a call for submissions made pursuant to subsection (4) of this section.

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

5 (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
10 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
15 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
20 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

25 (b) That material injury relates solely to the importation of
those goods and to no other circumstances; and

(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.

30 (3) If the Authority reports that urgent action is necessary to
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:

35 (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):

40 (b) The restriction of the importation of the goods under the
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.

(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. 5

(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. 10

(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.

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. 15

(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. 20

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. 25

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. 30

(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. 35

11. Consequential amendments—The Official Information Act 1982 is hereby consequentially amended by omitting from the First Schedule the following items: 40

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

“The Industries Development Commission;

5 and inserting, in its appropriate alphabetical order, the following item:

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

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

PART II

AMENDMENTS TO CUSTOMS ACT 1966

15 **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).

20 **14. New Part VA substituted**—(1) The principal Act is hereby amended by repealing Part VA (as substituted by section 11 of the Customs Amendment Act (No. 2) 1983), and substituting the following Part:

“PART VA

“DUMPING AND COUNTERVAILING DUTIES

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

25 “‘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:

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

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

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

*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

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

“(b) In the absence of such goods, other goods which have characteristics closely resembling those other goods: 5

“ ‘Subsidised goods’ means—

“(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: 10 15

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“(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: 20

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“(b) Goods in respect of the transportation of which there has been or will be paid, granted, authorised, or otherwise provided, directly or indirectly, any reduction or remission of freight: 25

“ ‘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;— Zealand and also includes any reduction or remission of freight;— 30 35
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 40

country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback.

5 “(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—

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

10 “(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

15 “(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.

20 “(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—

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

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

“(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

30 “(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) importer or an associate of the (buyer) importer 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.

40 “(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

“(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
- “(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
- “(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—
- “(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
- “(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.

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“(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 Part 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.

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“(8) For the purposes of this Part of this Act the term ‘reduction or remission of freight’ means the situation where, by reason of any circumstances, including the granting of rebates, refunds, or other allowances, goods exported to New Zealand have been carried, whether within the country of export for the purpose of exporting the goods to New Zealand or from the country of export to New Zealand or both, freight free, or the amount of freight paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods.

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“(9) For the purposes of this Part of this Act the term ‘normal freight’, in relation to goods exported to New Zealand, means—

- 5 “(a) The amount of freight that would have been payable in respect of the carriage of the goods within the country of export for the purpose of exporting the goods from that country to New Zealand if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the time of that carriage, in respect of the carriage of like goods, and to any other matter that the Minister considers relevant; or
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- 15 “(b) The amount of freight that would have been payable in respect of the carriage of the goods from the country of export to New Zealand if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the date of exportation of the goods, in respect of the carriage of like goods by sea or, if like goods are regularly carried by aircraft, by aircraft, and to any other matter that the Minister considers relevant; or
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- 25 “(c) The aggregate of the amount of freight referred to in paragraph (a) of this subsection and the amount of freight referred to in paragraph (b) of this subsection,—
- 30 as the case may be.

“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

35 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

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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

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any part of that price that represents—

“(i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

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“(ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; or

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“(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:

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“(i) The amount of any duties and taxes imposed under this Act or any other Act; and

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“(ii) The amount of any costs, charges, or expenses arising in relation to the goods after exportation; and

“(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.) sale by the importer having regard to the rate of profit that would normally be realised on sales of goods of the same general category by the importer where such sales exist.

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“(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

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“(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.

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

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“(2) Where the Minister is satisfied that—
 “(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
 “(ii) Sales in the relevant market are not suitable for determining a price under that subsection; or

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“(2) Where the Minister is satisfied that—
 “(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—
 “(i) There is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or
 “(ii) The situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this section are not suitable for use in determining such a price; or

“(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 and 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,—

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

“(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—

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“(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:

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“(i) Such amounts as the Minister determines would be reasonable amounts for administrative and selling costs, 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 having regard to the rate of profit normally realised on sales of goods of the same general category in the domestic market of the country of export of the goods where such sales exist:

“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 (*the*) a 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—

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

“(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
10 whichever of the following paragraphs the Minister determines is appropriate and reasonable in the circumstances of the case:

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15 “(ba) A value equal to the price of like goods produced or manufactured in a third country determined by the Minister and sold for home consumption in the ordinary course of trade in that third country, being sales that are arms length transactions:

20 “(c) A value equal to the price that, by reason of the quantity of goods, being like goods produced or manufactured in a third country determined by the Minister and sold for export from that country to *(the other)* another 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
25 for the like goods:

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30 “(d) A value equal to the price determined by the Minister to 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:

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

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

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“(ii) Such amounts as the Minister determines are the delivery charges and other costs necessarily 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:

“(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,—

“(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 by the Minister, so that those differences do not affect its comparison with that export price.

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“(ii) Such amounts as the Minister determines to be reasonable amounts for administrative and selling costs, delivery charges, and other costs or charges necessarily 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, having regard to the rate of profit normally realised on sales of goods of the same general category in the relevant market where such sales exist:

“(f) Where the Minister determines that neither **paragraph (c)** nor **paragraph (d)** nor **paragraph (e)** of this subsection provide an adequate basis for determination of normal value, the Minister shall determine the normal value for the purposes of this subsection on the basis of a value equal to the price payable for like goods produced or manufactured in New

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Zealand and sold for home consumption in the ordinary course of trade in New Zealand in sales that are arms length transactions duly adjusted, if necessary, to reflect reasonable profits.

5 “(4) Where the normal value of goods exported or intended to be exported to New Zealand is the price paid for like goods, in order to effect a fair comparison the normal value and the export price shall be compared by the Minister—

10 “(a) At the same level of trade; and

“(b) In respect of sales made at as nearly as possible the same time; and

15 “(c) With due allowances made as appropriate for any differences in terms and conditions of sales, differences in taxation, and any other differences which affect price comparability.

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

“(6) Where—

25 “(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

30 “(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,—

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—

35 “(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

40 “(ii) Sold in the country of export for export to a third country in sales that are arms length transactions,—

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

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“(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

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“(iv) Such amounts as the Minister determines to be reasonable amounts for administrative and selling costs, delivery charges and other charges 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.

“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.

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

“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.

“(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:

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

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5 “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
10 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:

15 “(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

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20 “(3) Where the Minister is satisfied that it is inappropriate to ascertain the amount of a subsidy except in accordance with this section by reason that the Government of the country of export—

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

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

30 the Minister may, for the purposes of this Part of this Act determine the amount of that subsidy on the basis that the normal value of the goods is such value as is ascertained in accordance with **section 186c (3)** of this Act.

35 “(4) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of the subsidy to be ascertained for the purposes of this Part of this Act, the amount of the subsidy shall be such amount as is determined by the Minister having regard to all available information.

40 “186F. **Material injury to industry**—(1) 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

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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 shall examine—

- “(a) The volume of the dumped or subsidised imports; and
- “(b) The effect of the dumped or subsidised imports on prices in the New Zealand market for like goods; and
- “(c) The consequent impact of the dumped or subsidised imports on the relevant New Zealand industry.

“(2) Without limiting the generality of subsection (1) of this section, and without limiting the matters the Minister may consider, the Minister shall have regard to the following matters:

- “(a) The extent to which there has been or is likely to be 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 in New Zealand; and

“(b) The extent to which the effect of the dumped or subsidised imports is or is likely 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 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

“(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)~~ investments.

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“(d) In respect of the subsidising of any agricultural product, any increase in the financial burden on any New Zealand Government agricultural support programme.

“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—

5 “(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) country or
 countries of the export of goods to which the notice
 relates; and

10 “(ii) Exporters and importers known by the
 Comptroller to have an interest in those goods; and

“(iii) The complainant in relation to those goods;
 and

15 “(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

“(c) Published in the *Gazette*.

“186H. **Initiation and subsequent investigation—**

20 (1) Subject to subsection (6) of this section, The Comptroller may,
 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—

25 “(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.

30 “(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.

35 “(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.

40 “(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—

- “(a) To present in writing all evidence relevant to the investigation, and, upon justification being shown, to present such evidence orally:
- “(b) Subject to the Official Information Act 1982, to have access to all non-confidential information relevant *(to the presentation of their case:)* to the presentation of their case and that is used by the Comptroller in the investigation, and to prepare representations on the basis of this information: 5
- “(c) On request being made, to meet those parties with adverse interests in order to present opposing views. 10
- “(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,— 15
- 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. 20

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“(6) As soon as possible after the Comptroller accepts a request from the industry concerned for initiation of an investigation into the subsidisation of any goods, and in any event before the initiation of such an investigation, the Government or Governments of the country or countries of export of the goods which are the subject of the complaint shall be given a reasonable opportunity for consultations with the aim of clarifying the situation as to the matters referred to in subsection (1) of this section and arriving at a mutually agreed solution. 25 30

“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— 35

- “(a) There is insufficient evidence of dumping or subsidising to justify proceeding with the investigation; or 40
- “(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—

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

“(d) Give notice of such termination.

“⁽²⁾ Where—

10 “(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

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15 “(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,—

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20 “(b) Any investigation is terminated pursuant to an undertaking given by the Government of the country of export or by an exporter, as the case may be, under **section 186M (1)** of this Act and that Government or that exporter violates that undertaking,—

25

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30 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 of the commencement of an investigation.

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the Comptroller may initiate a further investigation and all the provisions of this Part of this Act shall have effect accordingly.

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

“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 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. 5

“(2) Notwithstanding **subsection (1)** of this section where the Minister declares that by reason of— 10

- “(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 15
- “(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,— 20

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. 25

“(4) The Minister’s preliminary determination shall be given by notice. 30

“**186K. Final determination**—(1) Subject to **section 186I** of this Act, within 90 days after the making of a preliminary determination by the Minister in accordance with **section (186J) 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. 35

“(2) The final determination of the Minister shall be given by notice. 40

“(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

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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
5 considers necessary to take account of that revision.

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may revise the export price of the goods or the amount of freight paid or payable on the transport of the goods within such time after the date of importation of those goods as the
10 Minister considers necessary for that purpose having regard to all the circumstances, 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—

15 (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

20 “(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—

25 “(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

30 “(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 case of goods to which this section applies shall be a rate or amount
35 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.

“(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 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.

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“(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.

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

“(5) The Minister shall review the need for the continued 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.

“(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 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)* by the Government of the country of export or by the exporter of the goods that the Government or the exporter, as the case may be, 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
5 price of the goods and their normal value or the amount of subsidisation, as the case may be.

“(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
10 of the extent of injury to an industry shall nevertheless be *(completed if the exporter so desires or the Minister so decides.)* completed if the Government of the country of export or the exporter, as the case may be, so desires.

“(5) If an investigation referred to in subsection (4) of this
15 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
20 undertaking, in which case the Minister may require that the undertaking be maintained for such reasonable period as the Minister may determine.

“(6) The Minister may require any (*exporter*) party from whom undertakings have been accepted to provide information
25 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.

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

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

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“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
40 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

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Minister may determine is necessary to prevent material injury being caused during the period of investigation.

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“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: 5

“Provided that— 10

“(a) The rate or amount of such duty to be secured 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, which has been determined by the Minister pursuant to **section 186j** of this Act; and 15

“(b) The Minister is satisfied such action is necessary to prevent material injury being caused during the period of investigation.

“(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.

“(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. 25

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“(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. 30

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“(4) Where the amount of dumping duty or countervailing duty imposed pursuant to a provisional direction under **subsection (1)** of this section exceeds the amount of duty payable pursuant to a direction given under **section 186l** of this Act, the amount of the excess shall be remitted by the Minister. 35

New

“(5) Where the amount of dumping duty or countervailing duty imposed pursuant to a provisional direction under subsection (1) of this section is less than the amount of duty payable pursuant to a direction given under section 186L of this Act, the amount of the difference shall not be collected on those importations subject to the provisional direction.

“186O. **Retrospective measures**—(1) Anti-dumping duty and countervailing duty, and provisional measures, shall only 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 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 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—

“(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*) goods were dumped and that such dumping would cause injury; *(and)* or

“(ii) That the material injury is caused by (*massive*) substantial 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 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 paid or bestowed inconsistently with the provisions of the General Agreement on Tariffs and Trade and the Agreement

on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, 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 home consumption not more than 90 days prior to the date of the application of provisional measures. 10

“(4) Where (*an exporter*) the Government of the country of export or the exporter, as the case may be, 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) 90 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.*) Government of the country of export or the exporter, as the case may be. 15 20

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“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— 25

“(a) The amount of the export price of the goods is less than the normal value of the goods; and 30

New

“186P. **Third country anti-dumping and countervailing duties**—Where the Minister is satisfied that, in relation to the importation into New Zealand of goods produced or manufactured in another country, that— 35

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

“(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,— 40

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
5 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."

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

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.