



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

**Ministry of Business, Innovation &
Employment**

on

**Introducing a Bounded Public Interest Test into
the New Zealand Anti-Dumping and
Countervailing Duties Regime**

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1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. Thank you for the opportunity to comment on this discussion paper.
- 1.4. Countervailing and anti-dumping duties remain vital in ensuring that New Zealand's export and import-competing industries can continue to grow and thrive without their viability being threatened by unfair competition. Many New Zealand industries are already struggling to survive in the face of a chronically high exchange rate and little government support without also having to face unfairly priced competition.
- 1.5. Our primary concern is that any 'public interest test' should not lead to the loss of production and jobs in New Zealand. It must include strong protections against such loss. While we acknowledge that there may be times when there is a public interest case to examine anti-dumping and countervailing duties in place, any reduction in duties should be temporary and should not lead to medium or long term damage to otherwise viable New Zealand producers.
- 1.6. The duties will be in place only if "the goods are dumped or subsidised and have caused or threaten to cause material injury to a domestic industry producing the same type of goods as the imported goods" (p.6 of the Discussion Paper). Therefore any decision to override this should only ever be taken in extraordinary circumstances for which clear evidence is presented to justify such damaging action.

- 1.7. While the duties possibly have wider effects on competition and prices, they will not have been put in place unless there are also benefits, which are likely to include maintaining jobs in the short term and maintaining skills, industry knowledge and scale in the longer run. That is the balance that is recognised in imposing these forms of duties and it should not be disturbed unless the benefit significantly outweighs the primary benefits of the duties and is well-evidenced.
- 1.8. In any case, anti-dumping and countervailing duties are required to be aimed only at dumping and subsidies, and fairly priced imports should still exert competitive pressures. Therefore any improper competition effects are a matter for our competition laws and competition authorities. Reduction in countervailing and anti-dumping duties should not be used as a substitute for good competition law.
- 1.9. While it may be advantageous to competing importers or consumers to have access to lower cost dumped or subsidised products, the inevitable impact is further de-industrialisation regardless of the frequency of such imports. Local producers will find it very difficult to survive in the face of this uncertainty.
- 1.10. The CTU is strongly opposed to any weakening of duties. If any changes proceed, provision must, at the least, be made to assist workers who will or may be adversely affected. As a minimum this should include increased levels of income replacement, availability of retraining at public cost, and assistance in relocation if the worker wishes to do so.
- 1.11. There must also be provision for interested parties, including representatives of actually or potentially affected workers, to be given the opportunity to make submissions on the rationale and impact of such changes.

2. Objectives and process criteria

Question 1. *Do you agree that MBIE has identified the relevant policy objectives and process criteria for introducing a bounded public interest test? If not, please provide your own views in this respect. This is important because any option examined by MBIE will be measured according to the extent to which it meets the established policy objectives and process criteria identified (see below).*

2.1. The proposed objectives are described as follows:

- (i) To maintain the integrity of the anti-dumping and countervailing duties regime such that an effective mechanism exists for domestic producers to seek relief from dumped or subsidised imports in accordance with World Trade Organisation (WTO) rules, and:
- (ii) Provide a mechanism whereby anti-dumping and countervailing duties will not be imposed where they substantially lessen competition in markets in New Zealand, and/or
- (iii) Provide a mechanism whereby anti-dumping and countervailing duties will not be imposed where they have a significant negative impact on another party or interest in the New Zealand economy which outweighs the harm of the dumped goods to the domestic producers.

The options for introducing a bounded public interest test will be assessed against the three key policy objectives listed above. In addition, the options will also be assessed against the following process criteria:

- (iv) Does it impose low administration and compliance costs?
- (v) Does it promote regulatory certainty (e.g. where possible rules should not be vague and open to wide interpretation)?
- (vi) Does it provide discretion to take account of serious adverse events such as natural disasters?

2.2. The key issue here is the balance between integrity of the anti-dumping and countervailing duties system and the “public interest” considerations. We submit that the criteria should be more explicit than the former, as the primary reason for having duties in the first place, should be dominant.

2.3. Regarding limitation of competition, if the duties have an improper effect on lessening competition, it seems likely that our competition laws or competition authorities have failed in their job. After all, anti-dumping and countervailing duties should be aimed only at dumping and subsidies, and fairly priced imports should still exert competitive pressures. If the underlying premise is that *only* dumped and subsidised products can bring about competition then it is unlikely New Zealand will be able to secure a sustainable supply of these products. It follows that it is difficult to see how an action against these duties with regard to competition can be justified, except perhaps on a very temporary basis in extraordinary circumstances. The primary responsibility should lie with the authorities responsible for competition. Reduction in countervailing and anti-dumping duties should not be used as a substitute for good competition law.

3. Criteria as to whether to impose duties

3.1. In Option One, the Act will provide criteria on public interest matters to be taken into account in deciding whether or not to impose a duty. The example given of criteria to be taken into account (which appears to be proposed criteria) is:

- a. The likely impact on employment in the domestic industry (and upstream industries) if duties are not imposed;
- b. The long term viability of the domestic industry (and upstream industries) if duties are not imposed;
- c. Whether the imposition of duties would be likely to eliminate or substantially lessen competition in the New Zealand market;
- d. Whether the imposition of duties would cause significant damage to downstream industries including by limiting their access to necessary inputs;
- e. Whether the imposition of duties would significantly restrict the choice or availability of goods at competitive prices for consumers, or otherwise cause them significant harm;
- f. Whether, as the result of a significant and unforeseen adverse event, there are public interest considerations that should be taken into account.

Question 3: *Do you consider MBIE has identified the correct criteria to be considered in relation to whether or not to impose duties (under option 1)? If not, what additional or different criteria do you consider should be included? Please explain the rationale behind your suggestions.*

Question 5: *What additional benefits, costs, or risks could result from amending the Act to provide criteria on public interest matters that the Minister should take into account when deciding whether or not to impose a duty? Please explain your answer.*

3.2. See our above comments. A both short and long term view needs to be taken of employment in local industries. Uncertainty as a result of periodic removal of duties will threaten the viability and survival of the businesses affected, particularly if it comes in the face of other difficulties. While they may survive in the short run (for example because of a reduction of duties because of an adverse event) the removal of duties may ultimately have long run impacts. On the other hand, a business may be unable to continue because of a short run removal of duties, yet otherwise have long run prospects.

3.3. We agree with the use of the words “substantially” and “significant” in (c) to (f), but also submit the criteria should make it explicit that the primary considerations are those in (a) and (b).

- 3.4. As noted above, we do not believe that competition issues are proper matters for the proposed actions.
- 3.5. Regarding employment, a further criterion should be whether or not assistance is available for workers whose jobs are affected to ensure that they do not bear the cost of the changes.
- 3.6. Regarding “unforeseen adverse events”, it is not clear whether these proposals would permit an explicitly short-term and temporary reduction in duties which is in place no longer than could be justified by a particular adverse event, or whether it binds the imposed reduction in duties until the next review in five years. We oppose the latter. Further, there should be provision for the reduction in duties to be reviewed before their originally anticipated end date on the application of interested parties if circumstances do not work out as anticipated.
- 3.7. Under Option Two, the Act would provide numerical thresholds for determining whether or not duties are in the wider public interest. The following example is provided:
- a. The domestic industry applying for the duty holds less than 20 percent of the relevant market (indicating that the duties would only benefit a limited number of market participants); or
 - b. The domestic industry applying for the duty holds more than 80 percent of the relevant market (indicating that the industry already holds a dominant share of the total market).
 - c. The price of the imported goods, after the duty has been imposed, is still below local suppliers’ costs to make and sell the goods. This would indicate that the duties would be ineffective in removing the injury experienced by the industry.
- 3.8. We oppose this option as it does not provide sufficient discretion or flexibility for different circumstances.

4. Other considerations

Question 11. *Should there be a presumption in favour of imposing duties (where there is injurious dumping or subsidisation) which can be overturned by the application of a bounded public interest test? Or, alternatively, should equal weighting be given to the interests of domestic producers and other parties when applying the public interest test? Please explain your answer.*

4.1. As submitted above, we consider there should be a clear and explicit presumption in favour of imposing duties.

Question 12. *What should be the process for initiating a public interest assessment as part of the decision of whether or not to impose a duty (e.g. should a public interest assessment be undertaken automatically or only on request from an affected interested party who provides sufficient evidence that the duties would not be in the public interest)? Please explain your answer.*

4.2. There should be public notification of the proposed imposition of duties and a public interest assessment should be conducted only if requested by an interested party who provides sufficient evidence that the duties would not be in the public interest.

4.3. Whatever decision is taken on this aspect of the process, there should be provision for public submissions by interested parties including workers and their representatives.

4.4. As noted above, there should also be provision for a review of any reduction of duties resulting from a public interest assessment if requested at any time by an interested party including workers and their representatives.

Question 13. *Should interim duties apply during the public interest assessment if dumping/subsidisation and material harm have been found? Please explain your answer.*

4.5. If dumping or subsidisation is occurring, damage can occur quickly. We therefore strongly support interim duties applying during any public interest assessment.

5. Other procedural matters

5.1. We strongly support a requirement for interested parties, including workers and their representatives, to be given the opportunity to make their views known, both regarding the imposition of duties and as to the public interest considerations.