



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 and
Automatic Termination Period into the Anti-
Dumping and Countervailing Duties Regime**

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1. Introduction

- 1.1. This submission is made on behalf of the 36 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 325,000 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. Our affiliates have over 45,000 members in manufacturing firms which may be directly affected by these policies.
- 1.4. Thank you for the opportunity to make this submission.
- 1.5. As the Ministry is aware, we made a previous submission on the earlier iteration of this policy development, and reiterate the principles we expressed there that:
 - 1.5.1. 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.
 - 1.5.2. 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.

- 1.5.3. 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. 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.
- 1.5.4. 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.
- 1.5.5. 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.
- 1.5.6. 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.
- 1.5.7. 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.
- 1.5.8. 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.

- 1.6. We therefore oppose any automatic termination of anti-dumping or countervailing duties by the introduction of an automatic termination period (ATP).
- 1.7. We have not seen the wording of the proposed Public Interest Test and are unable to judge its effectiveness but from the discussion paper's description (p.10) it will include criteria regarding maintaining competition. That is sufficient. Automatically terminating such duties opens up unnecessary risks to viable businesses.
- 1.8. Automatic termination also encourages gaming by the dumping supplier or subsidising country. They know the duties will be terminated at a certain time so can hold off their dumping or subsidies until that point, with the knowledge that after that point the New Zealand supplier is defenceless.
- 1.9. It is not credible to say that a fixed period of duties before automatic termination gives the firm time to adjust. The point of the duties is that the imports are one way or the other below a reasonable cost. It is most unlikely that the New Zealand firm will be able to compete with such pricing whether it is now or five years into the future. In most cases it will be a case of the firm "adjusting" by leaving the market, with loss of jobs very likely.

2. **Answers to Questions**

Question 1. *Do you agree with MBIE's assessment of the pros and cons in the bullet points above [p.11]? If not, please provide your own views in this respect.*

- 2.1. The Pros and Cons are set out as follows:

Pros:

- ✓ encourage domestic industry to use the limited period when duties are in place to adjust to the expected future competition from dumped goods. Therefore, this combination will have a greater impact on increasing competition and consumer

welfare, improving housing affordability and assisting with the Christchurch earthquake rebuild compared to a public interest test on its own.

- ✓ once the duties have been imposed, provide certainty of outcome (duties will be imposed for a limited period under the ATP)
- ✓ retain the ability of the regime to provide industry with relief from dumped or subsidised imports, albeit for a limited period
- ✓ provide the discretion to take account of natural disasters such as an earthquake

Cons:

- × complex and resource-intensive to administer because it necessitates conducting a public interest assessment and, if the ATP allows industry to apply for the re-imposition of duties after the termination period, it will involve a new dumping or subsidy investigation
- × the public interest test aspect of this option is uncertain and subjective in nature since the public interest test requires balancing interests
- × depending on the design of the ATP, will reduce the effectiveness of the regime in providing relief from dumped or subsidised imports to a greater extent than option one
- × the ATP could re-orientate the dumping and countervailing duties regime from one which provides domestic producers with protection from dumped and subsidised imports to one which provides domestic producers with a limited time-period to adjust to dumped or subsidised import competition. In this manner, the dumping and countervailing duties regime could become akin to a safeguard mechanism which is designed to provide domestic producers with emergency but temporary protection from imports to allow the producers to adjust to import competition.

2.2. As noted in Section 1 above, we largely agree with MBIE's assessment of the "cons", though are not so concerned about the public interest test: there are always judgements involved in these, but, assuming they have effective criteria, they are better than no public interest consideration at all. In addition, we noted that automatic termination also encourages gaming by the dumping

supplier or subsidising country. They know the duties will be terminated at a certain time so can hold off their dumping or subsidies until that point, with the knowledge that after that point the New Zealand supplier is defenceless. The “certainty” described as an advantage is also a disadvantage.

2.3. Regarding the “pros”, it is impossible to tell whether the “increased competition and consumer welfare” will occur or whether instead the benefits of lower dumped or subsidised prices will be pocketed in importers’ margins. Neither is it possible to tell whether the benefits will be sufficient that they in fact do materially “improve housing affordability and assist with the Christchurch earthquake rebuild”, and whether that is sufficient benefit to counter the negative effects of production and job losses. It is that balance that a public interest assessment is intended to find. Imposing an automatic termination negates the purpose of that test.

2.4. We also remain concerned that a temporary relaxation for the purposes of a natural disaster could have lasting effects.

Question 2. *Do you think an ATP should be introduced into New Zealand’s trade remedies regime in addition to a bounded public interest test?*

Question 3. *For the two ATP options above, do you agree with MBIE’s assessment of the advantages and disadvantages (in the table)? If not, please provide your own views in this respect.*

Question 4. *What do you consider should be the maximum imposition period (e.g. five, eight or ten years) under an ATP, and why do you prefer a particular time period?*

Question 5. *Do you consider that an industry should have the ability to apply for the re-imposition of duties once the duties have been terminated as a result of the automatic termination period? If so, do you think industry should have the ability to apply for the re-imposition of duties at any time after the duties have been terminated or only following a minimum ‘stand down’ period.*

Question 6. *If you prefer a 'stand down' period, how long do you think the 'stand-down' period should be and why?*

- 2.5. We oppose the introduction of any ATP.
- 2.6. If one is introduced, Option 2, which allows firms to apply for resumption of duties after the duties have expired, is preferable because it at least allows consideration of ongoing unfair conditions. However it adds complexity, uncertainty and risk of damage during the period when duties have expired. Therefore any ATP should be at least 10 years.
- 2.7. A long "stand down period" without duties would increase the risk. There is still a heightened risk under this option of the loss of jobs and production. We therefore oppose any stand-down period.
- 2.8. We reiterate that we oppose any ATP.

Question 7. *Do you consider an ATP should be country or product specific? Why?*

- 2.9. If an ATP is introduced, we consider that it should be country specific to give flexibility to New Zealand firms to apply for the imposition of countervailing or anti-dumping duties on imports of the same good from other countries not subject to duties.
- 2.10. However, we reiterate that we oppose any ATP.