

Departmental Disclosure Statement

Trade (Anti-dumping and Countervailing Duties) Amendment Bill (the Bill)

The departmental disclosure statement for a government bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE) in consultation with the Ministry of Foreign Affairs and Trade (MFAT), New Zealand Customs Service, the Treasury and Parliamentary Counsel Office (PCO).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 May 2016

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Part One: General Policy Statement

The current anti-dumping and countervailing duties regime, administered under the *Dumping and Countervailing Duties Act 1988* (the Act), protects New Zealand industries from unfair trading practices by providing New Zealand industries with a mechanism to seek relief from imports that are dumped or subsidised.

Goods are considered to be dumped if the export price to New Zealand is less than the price the goods are sold for in the domestic market of the exporting country. Goods are subsidised when a foreign government provides a manufacturer or exporter of the goods with specific assistance, either directly or indirectly.

The Bill introduces a public interest test into New Zealand's anti-dumping and countervailing duties regime, which involves an assessment of the extent to which the cost to downstream industries and consumers of imposing a duty would materially outweigh the benefit to New Zealand industry of imposing that duty. The test would allow for broader public interest elements, such as competition and consumer welfare, to be considered before an anti-dumping or countervailing duty is imposed.

The Bill also introduces a provision that allows for anti-dumping and/or countervailing duties to be deferred, not imposed, terminated, or suspended if users of the goods that are subject (or potentially subject) to the duty have been significantly impacted by a natural disaster or other emergency.

This Bill also makes a number of minor and technical changes to the Act that can usefully be made in conjunction with the adoption of a public interest test. Most of these changes clarify the existing law by providing greater transparency in relation to the following:

- the decision-making process for the outcome of reviews of an existing duty
- consistency in the application of the rules on evidence and procedure to investigations, and reviews and reassessments of an existing duty
- imposition of a separate rate of duty for named exporters and to impose a residual rate of duty to all other exporters
- new exporter reassessments, resulting in separate rates of duty for new exporters or exemptions for new exporters from a duty
- the scope of, and process for carrying out, limited reviews.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Discussion Paper, Ministry of Business, Innovation and Employment (MBIE), <i>A Bounded Public Interest Test for the Anti-dumping and Countervailing Duties Regime</i>, June 2014.</p> <p>Cabinet Paper, <i>A Bounded Public Interest Test and Automatic Termination Period for the Anti-dumping and Countervailing Duties Regime</i>, June 2015. Available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/pdf-document-library/CabPaper-PIT-ATP.pdf</p> <p>Supplementary Discussion Paper, MBIE, <i>A Bounded Public Interest Test and Automatic Termination Period for the Anti-dumping and Countervailing Duties Regime</i>, June 2015. Available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/consultation-on-an-atp-supplementary-discussion-paper/supplementary-discussion-paper.pdf</p> <p>Cabinet Paper, <i>A Bounded Public Interest Test for the Anti-dumping and Countervailing Duties Regime</i>, August 2015. Available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/pdf-document-library/cab-paper-confirming-pit.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>The imposition of anti-dumping and countervailing duties by World Trade Organisation (WTO) Member countries are, however, subject to the rules in the relevant WTO agreements. These WTO agreements are the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement) and the Agreement on Subsidies and Countervailing Measures (the Subsidy Agreement).</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>First Regulatory Impact Statement (RIS): <i>Options Regarding the Development of a Public Interest Test for New Zealand's Anti-dumping and Countervailing Duties Regime</i>, MBIE, June 2015. Available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/pdf-document-library/ris-PIT-ATP.pdf</p> <p>Second Regulatory Impact Statement (RIS): <i>Options Regarding the Development of a Public Interest Test for New Zealand's Anti-dumping and Countervailing Duties Regime</i>, MBIE, August 2015. Available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/pdf-document-library/ris-confirming-pit.pdf</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
The Treasury Regulatory Impact Analysis Team (RIAT) has reviewed both RISs prepared by MBIE and associated supporting material. RIAT considers that the information and analysis summarised in the RISs meet the quality assurance criteria [June 2015, August 2015].	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>A typical dumping case would involve a New Zealand industry alleging injurious dumping of imports from a second country. Goods are considered to be dumped if they are exported for less than their price in the home market.</p> <p>Third country dumping is a situation in which an industry in a third country exports to New Zealand and claims it is being injured from dumped imports exported from the second country into New Zealand. The WTO Anti-dumping Agreement (the Anti-dumping Agreement) outlines that the third country government may apply to the New Zealand authorities for an investigation into the dumped goods from the second country.</p> <p>In a normal investigation, the public interest test will consider the costs to the downstream industries and consumers of the duty against the benefits to the domestic industry of that duty. In a third country dumping situation, we would be considering the costs to the New Zealand downstream industries and consumers against the benefits to an injured industry outside of New Zealand. This could result in New Zealand imposing an anti-dumping duty on dumped imports into New Zealand in order to protect the third country industry at the expense of New Zealand downstream industries and consumers.</p> <p>Flexibility has been drafted into the Bill, so that the Minister can have discretion over whether the Ministry, in conducting its public interest test, should consider the benefits to the injured industry outside of New Zealand. This discretion is required as there may be some instances where it is in New Zealand's interest to protect an industry in a country like Australia from having to compete with dumped imports in New Zealand. That Australian industry may have long-term supply arrangements with downstream New Zealand firms, for example, and any injury to the Australian industry from having to compete with dumped goods could negatively affect the New Zealand downstream industry.</p> <p>The application of a public interest test to third country dumping applications was not considered in the RISs.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>An analysis of the costs and benefits of a public interest test, for the various affected parties, is contained in the first and second Regulatory Impact Statements.</p> <p>See especially <i>Regulatory Impact Statement: Options Regarding the Development of a Public Interest Test for New Zealand's Anti-dumping and Countervailing Duties Regime</i>, MBIE, August 2015, at pages 22-26. This RIS is available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/pdf-document-library/ris-confirming-pit.pdf</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>MBIE (as the agency responsible for administering the public interest test) will seek information from domestic industry, New Zealand importers, downstream industry (users of the goods to which anti-dumping duties apply) and consumers (where relevant) through detailed questionnaires. These affected parties will be expected to provide input into the assessment of whether the imposition of anti-dumping and/or countervailing duties are in the public interest. This will enable MBIE to examine and weigh up the benefits and costs of imposing the duties. The better and more detailed the information provided by these affected parties, the better MBIE will be able to examine and weigh up the benefits and costs of imposing the duties.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Consultation was undertaken with MFAT to ensure the adoption of a public interest test (and its design) is consistent with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No separate formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi, as no policy measures in this Bill have been identified, as part of the normal policy process, as having impact on the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>At an early stage in developing the public interest test, public consultation took place in the form of stakeholder feedback on a publicly available discussion paper and supplementary discussion paper. These discussion papers sought views from stakeholders on a range of options for developing a public interest test for the anti-dumping and countervailing duties regime (including the parameters and procedural requirements of the test). Submissions were received from a range of firms and organisations representing domestic producers, importers and unions.</p> <p>Agency consultation has also taken place, in particular with MFAT, New Zealand Customs Service, and the Treasury.</p> <p>A summary of the results of the public and agency consultations is contained in the first and second Regulatory Impact Statements. See especially <i>Regulatory Impact Statement: Options Regarding the Development of a Public Interest Test for New Zealand's Anti-dumping and Countervailing Duties Regime</i>, MBIE, August 2015, at pages 27-32. This RIS is available at: http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/public-interest-test-for-the-anti-dumping-regime/pdf-document-library/ris-confirming-pit.pdf</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The details of the public interest test have been examined by the operational staff who will be responsible for administering the test to ensure the test is workable. These officials are also undertaking a dry run of anti-dumping duties in place on a particular imported product as if the public interest test was in place.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill also introduces a test which allows for anti-dumping and/or countervailing duties to be deferred, not imposed, terminated, or suspended if users of the goods subject (or potentially subject) to the duty have been significantly impacted by a natural disaster or other emergency.</p> <p>An example of when this provision may be invoked is if a city or region was struck by an earthquake and it was important to source imported product as cheaply as possible to assist in any rebuild. The non-imposition (or suspension) of anti-dumping and/or countervailing duties on imported building material would help lower the cost of any rebuild.</p> <p>This provision is a 'stand-alone' provision (i.e. unrelated to the public interest test) and will only be invoked in tightly defined circumstances including the use the definition of "emergency" under section 4 of the Civil Defence Emergency Management Act 2002.</p> <p>Where the Minister is deferring the imposition of the duty or suspending an existing duty, the Bill requires the Minister to determine a time period to which the deference or suspension applies although the Minister will have the ability to change that time period if there was a change in circumstances.</p> <p>The public interest test will amend the relevant Minister's current power to impose anti-dumping or countervailing duties by providing the Minister with more discretion whether or not to impose a duty.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<p>Part 6, Subpart 4 (New exporter reassessment), however, allows for the retrospective collection of duties in a new exporter reassessment. However, the Bill itself will not apply retrospectively. The new exporter rules will only apply after the Bill comes into force. Also, the retrospective collection of duties is discretionary and is consistent with the provisions of the WTO Anti-dumping Agreement.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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