

# **Trade (Anti-dumping and Countervailing Duties) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The current anti-dumping and countervailing duties regime, administered under the Dumping and Countervailing Duties Act 1988, 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 if a foreign government provides a manufacturer or exporter of the goods with specific assistance, either directly or indirectly.

This 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 New Zealand downstream industries and consumers, of imposing a duty would materially outweigh the benefit, to the 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 a countervailing duty is imposed.

This Bill also introduces a provision that would allow for an anti-dumping and a countervailing duty 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 that can usefully be made in conjunction with the adoption of a public interest test. Most of these changes clarify the law by providing greater transparency in relation to the following:

- the decision-making process for the outcome of a review 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 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.

### Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=143>

### Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 8 September 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found 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>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. This Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* is the principal Act clause. This Bill amends the Act that was previously called the Dumping and Countervailing Duties Act 1988.

## Part 1

### Amendments to principal Act

*Part 1* amends the Act that was previously called the Dumping and Countervailing Duties Act 1988. In summary, the main changes made by *Part 1* are—

- renaming the Act as the Trade (Anti-dumping and Countervailing Duties) Act 1988:

- restructuring the Act into Parts:
- inserting a purpose section and an overview section:
- clarifying the notice and access to information provisions:
- clarifying the existing procedure for investigations:
- inserting a new public interest test as an additional step in investigations (and in full reviews):
- clarifying how the rate or amount of a duty is determined:
- inserting a power to defer, not impose, terminate, or suspend a duty in situations involving natural disasters or emergencies:
- clarifying the provisions related to reviews and reassessments:
- inserting provisions related to new exporter reassessments:
- updating the provisions on third country investigations to reflect the new public interest test.

*Clause 4* repeals the Long Title.

*Clause 5* changes the Title of the Act to the Trade (Anti-dumping and Countervailing Duties) Act 1988 and includes a provision requiring references to the old Title to be read as references to the new Title.

*Clause 6* inserts *new sections 1A to 1C* (and a *new Part 1 heading*). In summary,—

- *new section 1A* is a purpose provision and sets out that the purpose of the Act is to apply anti-dumping and countervailing duties in accordance with the WTO Agreement:
- *new section 1B* is an overview provision and sets out a guide to the general structure of the Act:
- *new section 1C* sets out the status of examples.

*Clause 7* repeals section 2 (which relates to application).

*Clause 8* amends section 3 to insert new definitions, to amend an existing definition, and to repeal a definition. The main new definitions that are inserted are—

- the definition of emergency, which relates to when the Minister can defer, not impose, terminate, or suspend a duty:
- the definition of new exporter, which relates to the new exporter reassessment procedure contained in *subpart 4 of Part 6*.

*Clause 9* inserts *new section 3BB*, which relates to the transitional, savings, and related provisions schedule.

*Clause 10* inserts *new Part 2 (new sections 3E and 3F)* and a *new Part 3 heading*. In summary,—

- *new section 3E* contains provisions about notice and written advice:
- *new section 3F* contains provisions about access to information (including the treatment of confidential information).

*Clause 11* amends section 8(2)(d)(iv) to clarify that a factor to be considered by the chief executive is actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

*Clause 12* repeals section 9 (which relates to notice). Provisions relating to notice are now included in *new section 3E*.

*Clause 13* replaces sections 10 and 10A (which relate to investigations and to notice) with *new sections 10 to 10H*, a *new Part 4 heading*, and a new cross-heading. The new provisions are based on existing section 10, but modernise the wording in places and introduce a new public interest test as an additional step in the investigation process.

*New section 10* relates to making an application for the chief executive to start an investigation to determine the existence and effect of alleged dumping or subsidisation of goods imported or intended to be imported into New Zealand. It sets out who can apply and the evidence and information that an application must include.

*New section 10A* relates to the start of an investigation, including the trigger for starting an investigation, and procedural steps.

*New section 10B* provides that the chief executive must carry out an investigation in steps, starting with step 1 (which relates to dumping, subsidy, and material injury) and then, if directed to do so by the Minister, carrying out step 2 (which relates to public interest).

*New section 10C* sets out the scope of step 1 of an investigation and contains the procedural rules and time limits for that step. As part of the procedure, the chief executive must give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for the determination by the Minister.

*New section 10D* relates to the Minister's determination in step 1 of an investigation. It sets out the basis on which a determination must be made and the procedure for progressing to step 2 of an investigation (if required).

*New section 10E* relates to the Minister determining the rate or amount of a duty to be imposed. It provides that the Minister may determine different rates or amounts for named exporters and may also determine a residual rate or amount of duty. It also sets out the factors the Minister must have regard to and the limits on the size of any duty.

*New sections 10F to 10H* insert a public interest test as step 2 of an investigation. The chief executive must investigate, and the Minister must determine, whether imposing an anti-dumping or a countervailing duty is in the public interest. Imposing a duty is in the public interest unless the cost to downstream industries and consumers of imposing a duty is likely to materially outweigh the benefit to the domestic industry of imposing a duty.

*New section 10F* sets out the scope of step 2 of an investigation and includes the factors the chief executive must investigate.

*New section 10G* sets out the procedure for step 2 of an investigation (including time limits and presentation of evidence). As part of the procedure, the chief executive

must provide written advice of the preliminary findings that are likely to form the basis for the determination by the Minister.

*New section 10H* provides that the Minister must determine whether imposing a duty is in the public interest.

*Clause 14* amends section 11 (which relates to termination) to update cross-references and modernise the drafting.

*Clause 15* replaces sections 13 and 14 (which relate to determination and imposition of duties) with *new sections 13 to 13B* (and a *new Part 5 heading*).

*New section 13* provides that the Minister must impose a duty if the Minister determines that imposing a duty is in the public interest.

*New section 13A* contains provisions that relate to the period for which a duty has effect.

*New section 13B* relates to natural disasters and emergencies, and provides the Minister with a power to defer, not impose, terminate, or suspend a duty if the users of goods have been significantly impacted by a natural disaster or emergency.

*Clause 16* amends section 14AA to update cross-references.

*Clause 17* amends section 15 to update a cross-reference and to clarify that a price undertaking will lapse if the Minister determines that imposing a duty is not in the public interest.

*Clause 18* amends section 16 to update cross-references and to modernise the drafting.

*Clause 19* amends section 17 to update cross-references and to include all types of review and reassessment within the scope of the provision.

*Clause 20* amends section 17A to update cross-references and to include a determination made under *new section 10H* (which relates to the public interest test).

*Clause 21* inserts *new Part 6 (sections 17C to 17Y)*, which relates to review and reassessment, and a *new Part 7 heading*. The new provisions clarify how the existing review and reassessment procedures work, as well as inserting the new public interest test into the full review procedure and setting out the new exporter reassessment procedure.

*Subpart 1 of new Part 6* relates to full reviews.

*New section 17C* sets out the purpose of a full review.

*New section 17D* sets out the circumstances in which the chief executive can start a full review and contains a saving provision that allows an existing duty to remain payable during the period of an investigation (if it would otherwise expire during the investigation).

*New section 17E* describes the 2-stage process for carrying out a full review and the obligation on the chief executive to give notice when a decision is made to start each stage.

*New section 17F* describes the scope of what the chief executive must investigate in a full review and the procedural rules for a full review. The chief executive must give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for the Minister's determination.

*New section 17G* provides that the Minister must determine the outcome of the full review. If the Minister makes a negative determination, the Minister must terminate the imposition of the duty.

*New section 17H* relates to stage 2 of a full review (the public interest test). *New section 17H* sets out the scope of the public interest test and refers to the factors that must be investigated by the chief executive.

*New section 17I* describes the procedure for stage 2 of a full review. The chief executive must give the notified parties written advice of the preliminary findings that are likely to form the basis for the Minister's determination.

*New section 17J* provides that the Minister must determine whether continuing to impose a duty is in the public interest.

*New section 17K* sets out the consequences and next steps if the Minister determines that continuing to impose a duty is in the public interest.

*Subpart 2 of new Part 6* relates to limited reviews.

*New section 17L* sets out the purpose of a limited review.

*New section 17M* sets out the circumstances in which the chief executive can start a limited review.

*New section 17N* sets out the scope of a limited review and the procedural rules for carrying out a limited review. The chief executive must give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for the Minister's determination.

*New section 17O* provides that the Minister must determine each matter being investigated and the consequences of a determination.

*Subpart 3 of new Part 6* relates to reassessments.

*New section 17P* sets out the purpose of a reassessment.

*New section 17Q* sets out the circumstances in which the chief executive can start a reassessment.

*New section 17R* sets out the scope of a reassessment and the procedural rules for carrying out a reassessment.

*New section 17S* provides that the Minister must determine a reassessed rate or amount and the basis on which the reassessment must be made. *New section 17S* also sets out the date from which a reassessed duty applies and includes a provision related to refunds.

*Subpart 4 of new Part 6* relates to new exporter reassessments.

*New section 17T* sets out the purpose of a new exporter reassessment.

*New section 17U* sets out the circumstances in which the chief executive can start a new exporter reassessment.

*New section 17V* sets out the scope of a new exporter reassessment and the procedural rules for carrying out a new exporter reassessment.

*New section 17W* provides that the Minister must determine a reassessed rate or amount and the basis on which the reassessment must be made. *New section 17W* also sets out the date from which a reassessed duty applies.

*New section 17X* provides that no duty may be imposed on goods imported from a new exporter during a new exporter reassessment. However, a duty may subsequently be imposed retrospectively, and the Minister is able to give a provisional direction that payment of duty be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996.

*Subpart 5 of new Part 6* relates to termination.

*New section 17Y* reproduces the existing termination power that is currently in section 14(7).

*Clause 22* amends section 18 in relation to third country anti-dumping and countervailing duties. These provisions apply if the Government of a third country (X) advises the chief executive that—

- goods imported or intended to be imported into New Zealand were produced or manufactured in another country (Y):
- those goods have been dumped or subsidised:
- by reason of the dumping or subsidisation, material injury to a domestic industry of country X has been or is being caused or is threatened, or the establishment of a domestic industry of country X has been or is being materially retarded.

The amendments set out how the public interest test will apply in this scenario (and clarify how other provisions apply). In relation to the public interest test, the Minister must consider only the cost to New Zealand downstream industries and New Zealand consumers. However, in relation to considering the domestic industry, if the Minister considers it appropriate, the Minister may consider a combination of both the New Zealand domestic industry (if any) and the domestic industry of the relevant third country.

*Clause 23* inserts a new *Part 8* heading.

*Clause 24* amends section 19 to update cross-references.

*Clause 25 and Schedule 1* insert new *Schedule 1*, which contains transitional, savings, and related provisions. In summary,—

- *clause 1 of new Schedule 1* contains a definition of commencement:
- *clauses 2 to 4 of new Schedule 1* contain the transitional provisions for the amendments made by this Bill.

The transitional arrangements provide that—

- 
- new investigations started on or after commencement will take place under the new provisions:
  - new full reviews, limited reviews, reassessments, and new exporter reassessments started on or after commencement (even in respect of duties imposed before commencement) will take place under the new provisions:
  - existing investigations, reassessments, and reviews started before commencement will continue under the old provisions.

However, if a duty is imposed after commencement following an existing investigation or review, or if a duty is imposed in the 3-month period before commencement, the chief executive may carry out a stand-alone public interest test in relation to the duty.

*Clause 26 and Schedule 2* replace references to “Secretary” with references to “chief executive”.

## **Part 2**

### **Consequential amendments to other enactments**

*Clause 27 and Schedule 3* consequentially amend other Acts and regulations to reflect the new Title of the Act.



*Hon Paul Goldsmith*

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Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Trade (Anti-dumping and Countervailing Duties) Amendment Act **2016**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10  
This Act amends the Act that was previously called the Dumping and Countervailing Duties Act 1988 (the **principal Act**).

**Part 1  
Amendments to principal Act**

- 4 Long Title repealed**  
Repeal the Long Title.
- 5 Name of principal Act changed** 15  
(1) As from the commencement of this section,—

- (a) the Dumping and Countervailing Duties Act 1988 is called the Trade (Anti-dumping and Countervailing Duties) Act 1988; and
  - (b) every reference in any enactment and in any document to the Dumping and Countervailing Duties Act 1988 must, unless the context otherwise requires, be read as a reference to the Trade (Anti-dumping and Countervailing Duties) Act 1988. 5
- (2) In the heading to section 1, delete “**Short**”.
- (3) In section 1(1), replace “may be cited as the Dumping and Countervailing Duties” with “is the Trade (Anti-dumping and Countervailing Duties)”.
- 6 New sections 1A to 1C and new Part 1 heading inserted** 10
- After section 1, insert:

**Part 1**  
**General provisions**

**1A Purpose**

The purpose of this Act is to enable New Zealand to apply anti-dumping and countervailing duties in accordance with the WTO Agreement. Anti-dumping and countervailing duties are intended to prevent material injury or the threat of material injury to an industry, or the establishment of an industry being materially retarded, due to dumped or subsidised goods being imported into New Zealand. 15  
20

**1B Overview**

- (1) This section is a guide to the general scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act.
- (2) In this Act,—
- (a) this Part specifies the purposes of this Act and defines terms and expressions used in this Act: 25
  - (b) **Part 2** contains procedural provisions about notice and access to information:
  - (c) **Part 3** contains provisions related to export prices, normal values, and material injury: 30
  - (d) **Part 4** contains provisions related to investigations (including a public interest test):
  - (e) **Part 5** contains provisions regarding how anti-dumping or countervailing duty is imposed:
  - (f) **Part 6** contains provisions about review and reassessment as follows: 35
    - (i) **Subpart 1** describes full reviews (including a public interest test):

	(ii) <b>Subpart 2</b> describes limited reviews:	
	(iii) <b>Subpart 3</b> describes reassessments:	
	(iv) <b>Subpart 4</b> describes new exporter reassessments:	
	(v) <b>Subpart 5</b> contains a provision regarding the termination of anti-dumping or countervailing duties:	5
	(g) <b>Part 7</b> contains provisions regarding third country anti-dumping and countervailing duties:	
	(h) <b>Part 8</b> contains savings provisions.	
<b>1C</b>	<b>Status of examples</b>	
(1)	An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.	10
(2)	If an example and a provision to which it relates are inconsistent, the provision prevails.	
<b>7</b>	<b>Section 2 repealed (Application)</b>	
	Repeal section 2.	15
<b>8</b>	<b>Section 3 amended (Interpretation)</b>	
(1)	In section 3(1), insert in their appropriate alphabetical order:	
	<b>chief executive</b> means the chief executive of the Ministry	
	<b>emergency</b> has the meaning given to it in section 4 of the Civil Defence Emergency Management Act 2002	20
	<b>full review stage 1</b> means stage 1 of a full review as described in <b>sections 17F and 17G</b>	
	<b>full review stage 2</b> means stage 2 of a full review as described in <b>sections 17H to 17J</b>	
	<b>investigation step 1</b> means step 1 of an investigation as described in <b>sections 10C to 10E</b>	25
	<b>investigation step 2</b> means step 2 of an investigation as described in <b>sections 10F to 10H</b>	
	<b>new exporter</b> means an exporter who—	
(a)	exports goods into New Zealand that are subject to an anti-dumping or a countervailing duty imposed under this Act; and	30
(b)	did not export those goods into New Zealand during the period of the original investigation that led to the duty being imposed; and	
(c)	is not related to an exporter who did export those goods into New Zealand during the period of the original investigation that led to the duty being imposed	35
	<b>notified parties</b> means—	

(a)	the Government or Governments of the country or countries of the export of goods to which the notice relates; and	
(b)	exporters and importers known by the chief executive to have an interest in those goods; and	
(c)	the applicant in relation to those goods; and	5
(d)	where the Minister or the chief executive is taking action under section 18, the Government of the third country on behalf of whom the Minister or the chief executive is taking action	
	<b>specified period</b> means (other than in section 14AA),—	
(a)	in the case of goods of Singaporean origin, 3 years; and	10
(b)	in the case of goods of any other origin, 5 years	
(2)	In section 3(1), definition of <b>day</b> , replace “sections 14(2), 17, and 17B(4)” with “ <b>sections 13A(1), 17, 17B(4), 17K(2), 17O(3) to (5), 17S(4), and 17W(4)</b> ”.	
(3)	In section 3(1), repeal the definition of <b>Secretary</b> .	15
<b>9</b>	<b>New section 3BB inserted (Transitional, savings, and related provisions)</b> After section 3BA, insert:	
<b>3BB</b>	<b>Transitional, savings, and related provisions</b> The transitional, savings, and related provisions set out in <b>Schedule 1</b> have effect according to their terms.	20
<b>10</b>	<b>New Part 2 and new Part 3 heading inserted</b> After section 3D, insert	
	<b>Part 2</b> <b>Notice and access to information</b>	
<b>3E</b>	<b>Notice and written advice</b>	25
(1)	For the purposes of this Act, a reference to a <b>notice</b> means a notice that—	
(a)	is in writing; and	
(b)	contains—	
(i)	a brief summary of the reasons for the giving of the notice; and	
(ii)	any other information required to be specified in the notice; and	30
(c)	is given to the notified parties; and	
(d)	is published in the <i>Gazette</i> .	
(2)	Notice may be given under <b>subsection (1)(c)</b> —	
(a)	by personal delivery to the party; or	

- (b) by posting it to the last known address of the party; or
  - (c) if the party has a known email address, by sending it to the party at that address by email; or
  - (d) if the party has a known fax number, by sending it to the party at that number by fax. 5
- (3) Written advice may be given under **sections 10C(2), 10G(1), 17F(2), 17I(1), and 17N(3)** by any of the methods referred to in **subsection (2)**.
- 3F Access to relevant information**
- (1) An interested party may ask the chief executive to provide copies of information relevant to an investigation, a full review, a limited review, a reassessment, or a new exporter reassessment. 10
- (2) **Subsection (1)** does not apply to—
- (a) confidential information (unless the submitter of the confidential information consents to the confidential information being made available); or 15
  - (b) other information that the chief executive would be likely to withhold if it were requested under the Official Information Act 1982.
- (3) The chief executive may request a submitter of information to provide the chief executive with—
- (a) a summary, for access by interested parties, of confidential information or other information that the chief executive would be likely to withhold if it were requested under the Official Information Act 1982; or 20
  - (b) reasons why a summary cannot be provided.
- (4) If no document is provided after a request under **subsection (3)** or if the chief executive is not satisfied with a document provided, the chief executive may disregard the relevant information from the investigation, full review, limited review, reassessment, or new exporter reassessment. 25
- (5) In this section, **confidential information** means information about which the submitter of the information has shown a good reason for the chief executive to believe 1 or more of the following: 30
- (a) that making the information available would give a significant competitive advantage to a competitor of the submitter of confidential information:
  - (b) that making the information available would have a significantly adverse effect on— 35
    - (i) the submitter of confidential information; or
    - (ii) the person from whom the information was acquired by the submitter of the information; or
    - (iii) any person to whom the information relates:



- (c) that the information should be treated as confidential for reasons other than the reasons described in **paragraphs (a) and (b)**.

### Part 3 Dumping, subsidy, and material injury

- 11 Section 8 amended (Material injury)** 5  
In section 8(2)(d)(iv), after “potential”, insert “negative”.
- 12 Section 9 repealed (Form of notice)**  
Repeal section 9.
- 13 Sections 10 and 10A replaced** 10  
Replace sections 10 and 10A with:

### Part 4 Investigation

#### *Application*

- 10 Application for investigation**
- (1) One or more New Zealand producers of like goods (or a person acting on behalf of those producers) may apply to the chief executive to start an investigation to determine the existence and effect of alleged dumping or subsidisation of goods imported or intended to be imported into New Zealand. 15
- (2) An application must be in writing and include evidence of— 20
- (a) dumping or subsidisation; and
- (b) material injury or threatened material injury to the industry, or establishment of the industry being materially retarded; and
- (c) a causal link between the alleged dumping or subsidisation and the alleged material injury, threatened material injury, or establishment of the industry being materially retarded. 25
- (3) An application must include as much of the following information as is reasonably available to the applicant:
- (a) the names of the New Zealand producers making the application:
- (b) the names of all other known New Zealand producers of like goods:
- (c) a description of the volume and value of the domestic production of like goods, both by the producers referred to in **paragraph (a)** and by the producers referred to in **paragraph (b)**: 30
- (d) a complete description of the allegedly dumped or subsidised goods:

(e)	the names of the countries of origin or export of the allegedly dumped or subsidised goods:	
(f)	the name of each known exporter or overseas producer of the allegedly dumped or subsidised goods:	
(g)	the names of persons known to be importing the allegedly dumped or subsidised goods:	5
(h)	in the case of subsidised goods, the existence, amount, and nature of the subsidy:	
(i)	normal values of the allegedly dumped goods when destined for consumption in the domestic markets of the countries of origin or export (or, if appropriate, either the prices at which the goods are sold from the countries of origin for export to third countries, or the prices based on a constructed value):	10
(j)	the export prices of the allegedly dumped or subsidised goods (or, if appropriate, the prices at which the goods are first resold in arm's length transactions in New Zealand):	15
(k)	the import volumes into New Zealand of the allegedly dumped or subsidised goods:	
(l)	the effects that the imports of the allegedly dumped or subsidised goods have had, or will have, on prices of like goods in New Zealand:	20
(m)	the consequent impact of those imports on the industry:	
(n)	relevant factors affecting the industry that may have a bearing on the information required under <b>paragraphs (l) and (m)</b> .	
<b>10A</b>	<b>Start of investigation</b>	
(1)	The chief executive must start an investigation if the chief executive is satisfied from the evidence in the application that—	25
(a)	there is sufficient evidence to justify investigating whether—	
(i)	goods imported or intended to be imported into New Zealand are being dumped or subsidised; and	
(ii)	the alleged dumping or subsidisation—	30
(A)	has caused, is causing, or threatens to cause material injury to the industry; or	
(B)	has caused or is causing the establishment of the industry to be materially retarded; and	
(b)	the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes—	35
(i)	25% or more of the total New Zealand production of like goods produced for domestic consumption (as assessed during the most recent representative period of not less than 6 months); and	

(ii)	more than 50% of the total production of like goods produced for domestic consumption (assessed as referred to in <b>subparagraph (i)</b> ) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.	
(2)	The chief executive must, before starting an investigation,—	5
(a)	inform the Government or Governments of the country or countries of export of the goods that are the subject of the proposed investigation; and	
(b)	in the case of an application for an investigation into the alleged subsidisation of goods, give that Government or those Governments a reasonable opportunity for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.	10
(3)	Despite <b>subsection (1)</b> , the chief executive must not start an investigation in relation to alleged dumping of goods of Australian origin.	
	<i>Investigation steps</i>	15
<b>10B</b>	<b>Investigation steps</b>	
(1)	The chief executive must carry out investigation step 1 first and then, if directed to do so by the Minister under <b>section 10D(2)</b> , carry out investigation step 2.	
(2)	The chief executive must give notice of a decision to start each step of an investigation as soon as practicable after the decision is made, and that notice must include the date on which the step of the investigation started or will start.	20
	<i>Step 1: dumping, subsidy, and material injury</i>	
<b>10C</b>	<b>Step 1: investigation</b>	
	<i>Dumping, subsidy, and material injury</i>	25
(1)	The chief executive must investigate whether, in relation to imported goods or goods intended to be imported into New Zealand,—	
(a)	the goods are being dumped or subsidised; and	
(b)	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, because of the dumping or subsidisation.	30
	<i>Procedure</i>	
(2)	The chief executive must, within 150 days after starting investigation step 1, give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under <b>section 10D(1)</b> .	35
(3)	The chief executive must give interested parties a reasonable opportunity—	

- (a) to present, in writing, all evidence relevant to the investigation and, on justification being shown, to present that evidence orally; and
- (b) on request by an interested party, to meet other interested parties with adverse interests in order that they may present opposing views.
- (4) **Subsection (2)** does not require the chief executive to provide information that would not be available to an interested party under **section 3F**. 5
- (5) The chief executive must report the findings of investigation step 1 to the Minister.
- 10D Step 1: determination**
- (1) Within 180 days after the start of investigation step 1 (but not less than 30 days after the written advice is given by the chief executive under **section 10C(2)**), the Minister must determine whether, in relation to the imported goods or goods intended to be imported into New Zealand,— 10
- (a) the goods are being dumped or subsidised; and
- (b) 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, because of the dumping or subsidisation. 15
- (2) If the Minister makes an affirmative determination, the Minister must—
- (a) determine the rate or amount of anti-dumping or countervailing duty, in accordance with **section 10E**, that will form the basis for investigation step 2; and 20
- (b) direct the chief executive to immediately start investigation step 2.
- (3) If the Minister makes a negative determination, the Minister must terminate the investigation under section 11.
- (4) The Minister must give notice of a determination under **subsection (1)** as soon as practicable after the determination is made. 25
- (5) In this section,—
- affirmative determination** means a determination made by the Minister under **subsection (1)** that, in relation to the imported goods or goods intended to be imported into New Zealand,— 30
- (a) the goods are being dumped or subsidised; and
- (b) 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, because of the dumping or subsidisation
- negative determination** means a determination made by the Minister under **subsection (1)** that is not an affirmative determination. 35
- 10E Determining rate or amount of anti-dumping or countervailing duty**
- (1) The Minister may, in respect of dumped or subsidised goods,—

- (a) determine different rates or amounts of duty for named exporters:
  - (b) determine a residual rate or amount of duty for all other exporters from the same country as a named exporter.
- (2) The Minister must, in determining the rate or amount of the duty, have regard to— 5
- (a) the desirability of ensuring that the rate or amount is not greater than is necessary to—
    - (i) prevent the material injury or a recurrence of the material injury; or
    - (ii) remove the threat of material injury to an industry; or 10
    - (iii) prevent the material retardation to the establishment of an industry; and
  - (b) New Zealand’s obligations as a party to the WTO Agreement.
- (3) The rate or amount must not exceed,— 15
- (a) in the case of dumped goods, the difference between the export price of the goods and their normal value; and
  - (b) in the case of subsidised goods, the amount of the subsidy on the goods.

*Step 2: public interest*

**10F Step 2: investigation**

- (1) If the Minister directs the chief executive to start investigation step 2, the chief executive must investigate whether imposing an anti-dumping or a countervailing duty at the rate or amount determined under **section 10D(2)(a)** is in the public interest. 20
- (2) Imposing the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. 25
- (3) In investigating whether imposing the duty is in the public interest, the matters the chief executive must investigate include the following:
  - (a) the effect of the duty on the prices of the dumped or subsidised goods:
  - (b) the effect of the duty on the prices of like goods produced in New Zealand: 30
  - (c) the effect of the duty on the choice or availability of like goods:
  - (d) the effect of the duty on product and service quality:
  - (e) the effect of the duty on the financial viability of the domestic industry:
  - (f) the effect of the duty on employment levels: 35
  - (g) whether there is an alternative supply (domestically or internationally) of like goods available:

- (h) any factor that the chief executive considers essential to ensure the existence of competition in the market.
- (4) In this section,—
- consumers** means—
- (a) New Zealand consumers of— 5
- (i) the dumped or subsidised goods; or
- (ii) like goods; or
- (iii) the other goods referred to in **paragraph (a)** of the definition of downstream industries; and
- (b) if the Minister considers it appropriate for the purposes of this section, any other relevant New Zealand consumers 10
- domestic industry** means the industry referred to in **section 10D(1)(b)**
- downstream industries** means—
- (a) each immediate downstream New Zealand industry that uses the dumped or subsidised goods, or like goods, as an input in the production of other goods; and 15
- (b) if the Minister considers it appropriate for the purposes of this section, any other relevant downstream New Zealand industry.
- 10G Step 2: procedure**
- (1) The chief executive must, within 60 days after starting investigation step 2, give the notified parties written advice of the preliminary findings that are likely to form the basis for a determination to be made by the Minister under **section 10H(1)**. 20
- (2) The chief executive must give all persons that the chief executive considers would be significantly affected by imposing the duty a reasonable opportunity to present, in writing, all evidence relevant to the investigation and, on justification being shown, to present that evidence orally. 25
- (3) **Subsection (1)** does not require the chief executive to provide information that would not be available to an interested party under **section 3F**.
- (4) The chief executive must report the findings of investigation step 2 to the Minister. 30
- 10H Step 2: determination**
- (1) Within 90 days after the start of investigation step 2 (but not less than 30 days after the written advice is given by the chief executive under **section 10G(1)**), the Minister must determine whether imposing the anti-dumping or countervailing duty is in the public interest (*see* **section 10F(2)**). 35
- (2) The Minister must give notice of a determination under **subsection (1)** as soon as practicable after the determination is made.

*Termination of investigations*

**14 Section 11 amended (Termination of investigations)**

- (1) In section 11(1), replace “final determination under section 13” with “determination under **section 10H(1)**”.
- (2) In section 11(1)(e), replace “initiated” with “started”. 5
- (3) In section 11(3), replace “initiate” with “start”.
- (4) In section 11(4), replace “initiation” with “start”.

**15 Sections 13 and 14 replaced**

Replace sections 13 and 14 with:

**Part 5**

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**Anti-dumping and countervailing duties**

**13 Imposing anti-dumping or countervailing duty**

- (1) If the Minister determines under **section 10H(1)** that imposing the duty is in the public interest, the Minister must impose a duty, at the rate or amount determined under **section 10D(2)(a)**,— 15
  - (a) to be known as anti-dumping duty, in respect of those goods that are dumped;
  - (b) to be known as countervailing duty, in respect of those goods that are subsidised.
- (2) The Minister must give notice of the imposition of a duty under **subsection (1)** as soon as practicable after the imposition is made. 20
- (3) Despite **subsection (1)**, the Minister must not impose a countervailing duty if to do so would be inconsistent with New Zealand’s obligations as a party to the WTO Agreement.
- (4) **Subsection (1)** is subject to **section 13B**. 25

**13A Period of anti-dumping or countervailing duty**

- (1) A duty imposed under **section 13(1)**—
  - (a) has effect on and from the applicable date referred to in section 17, 17A, or 17B; and
  - (b) must be collected and paid on the demand of the Customs on and from the day after the date on which the notice under **section 13(2)** is published in the *Gazette*; and 30
  - (c) ceases to be payable from the date that is the specified period after the date on which the duty has effect under **paragraph (a)**.
- (2) **Subsection (1)(c)** is subject to **section 13B** and **Part 6**. 35

**13B Natural disasters or emergencies**

*Deferral and non-imposition*

- (1) Despite **section 13(1)**, if the Minister considers that the users of the goods have been significantly impacted by a natural disaster or emergency, the Minister may, by notice,— 5
  - (a) defer imposing a duty; or
  - (b) elect not to impose a duty.
- (2) If the Minister defers imposing a duty— 10
  - (a) the Minister must specify the period of deferral in the notice; and
  - (b) the Minister may, by further notice, change the period of a deferral.

*Suspension and termination*

- (3) If the Minister considers that the users of goods subject to an anti-dumping or a countervailing duty have been significantly impacted by a natural disaster or emergency, the Minister may, by notice, terminate or suspend, in whole or in part, the imposition of the duty. 15
- (4) If the Minister suspends the imposition of the duty,—
  - (a) the Minister must specify, in the notice, the period of suspension (which may start before the date of the notice); and
  - (b) the Minister may, by further notice, change a period of suspension.
- (5) If the Minister terminates the imposition of the duty, the date of termination specified in the notice may be before the date of the notice. 20

**16 Section 14AA amended (Temporary suspension of anti-dumping duties on residential building material)**

- (1) In section 14AA(2)(a), replace “section 14(1)” with “**section 13(1)**”.
- (2) In section 14AA(5)(a), replace “section 14(7)” with “**section 17Y**”. 25

**17 Section 15 amended (Price undertakings)**

- (1) In section 15(1), replace “initiated an investigation pursuant to section 10” with “started an investigation under **section 10A**”.
- (2) After section 15(5), insert:
  - (5A) If an investigation referred to in subsection (4) is completed and the Minister determines that imposing an anti-dumping or a countervailing duty is not in the public interest, the undertaking automatically lapses. 30

**18 Section 16 amended (Provisional measures)**

- (1) In section 16(1), replace “initiated by the Secretary under section 10” with “started by the chief executive under **section 10A**”. 35
- (2) In section 16(2), replace “initiated” with “started”.



- (3) Replace section 16(3) with:
- (3) A provisional direction given under subsection (1) or (2) ceases to have effect from—
- (a) the date of the determination made by the Minister under **section 10H(1)**; or
  - (b) if no determination has been, or will be, made under **section 10H(1)**, the date of the determination made by the Minister under **section 10D(1)**.
- (4) In section 16(5), replace “section 14(4)” with “**section 10D(2)(a)**”.
- (5) In section 16(6), replace “section 14(4)” with “**section 10D(2)(a)**”.
- 19 Section 17 amended (Date on and from which duty payable)**
- (1) In section 17(b), replace “final determination under section 13(1)” with “determination under **section 10H(1)**”.
- (2) After section 17(b), insert:
- (ba) for a full review stage 2 determination under **section 17J(1)**,—
    - (i) the day after the date of that determination; or
    - (ii) a specified day after the day in **subparagraph (i)**:
- (3) In section 17(c), replace “section 14(6)” with “**section 17S** or a new exporter reassessment under **section 17W**”.
- (4) In section 17(c)(i), replace “that reassessment determination” with “the reassessment determination or the new exporter reassessment determination”.
- 20 Section 17A amended (Duty may be levied retrospectively to cover period of provisional measures if certain conditions met)**
- Replace section 17A(1) with:
- (1) This section applies if the Minister makes a provisional direction and later—
- (a) makes a determination under **section 10D(1)** on the grounds of—
    - (i) material injury to an industry; or
    - (ii) a threat of material injury where there would have been material injury if there had not been provisional measures; and
  - (b) makes a determination under **section 10H(1)** that imposing a duty is in the public interest.
- 21 New Part 6 and new Part 7 heading inserted**
- After section 17B, insert:

**Part 6****Review and reassessment****Subpart 1—Full review***Full review: purpose, start, and stages*

<b>17C Purpose of full review</b>	5
The purpose of a full review is to investigate, in relation to an anti-dumping or a countervailing duty, whether—	
(a) continued imposition of the duty is necessary to offset dumping or subsidisation; and	
(b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.	10
<b>17D Start of full review</b>	
(1) The chief executive must start a full review of a duty after receiving an application from an interested party that includes positive evidence justifying the need for a full review.	15
(2) The chief executive may start a full review of a duty at the chief executive's discretion.	
(3) <b>Subsection (4)</b> applies if—	
(a) the chief executive starts a full review of an existing duty; and	20
(b) the duty would, apart from <b>subsection (4)</b> , cease to be payable during the period of the investigation.	
(4) The existing duty does not cease to be payable during the period of the investigation and remains payable until the duty is—	
(a) terminated following a negative determination under <b>section 17G(1)</b> ;	25
or	
(b) terminated following a determination that continuing to impose the duty is not in the public interest; or	
(c) replaced with a new duty under <b>section 17K(2)</b> .	
<b>17E Full review stages</b>	30
(1) The chief executive must carry out full review stage 1 first and then, if directed to do so by the Minister under <b>section 17G(2)</b> , carry out full review stage 2.	
(2) The chief executive must give notice of a decision to start each stage of a full review as soon as practicable after the decision is made, and that notice must include the date on which each stage of the full review started or will start.	35

*Full review stage 1: dumping, subsidy, and material injury*

**17F Full review stage 1: investigation**

*Dumping, subsidy, and material injury*

- (1) The chief executive must investigate, in relation to an anti-dumping or a countervailing duty, whether— 5
- (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied. 10

*Procedure*

- (2) The chief executive must, within 150 days after starting full review stage 1, give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under **section 17G(1)**. 15
- (3) The chief executive must give interested parties a reasonable opportunity—
- (a) to present, in writing, all evidence relevant to the full review and, on justification being shown, to present that evidence orally; and
  - (b) on request being made by an interested party, to meet other interested parties with adverse interests in order that they may present opposing views. 20
- (4) **Subsection (2)** does not require the chief executive to provide information that would not be available to an interested party under **section 3F**.
- (5) The chief executive must report the findings of full review stage 1 to the Minister. 25

**17G Full review stage 1: determination**

- (1) Within 180 days after the start of full review stage 1 (but not less than 30 days after the written advice is given by the chief executive under **section 17F(2)**), the Minister must determine whether— 30
- (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.
- (2) If the Minister makes an affirmative determination, the Minister must— 35
- (a) determine the rate or amount of anti-dumping or countervailing duty, in accordance with **section 10E**, that will form the basis for full review

- stage 2 (which may be the same rate or amount as originally applied or a different rate or amount); and
- (b) direct the chief executive to immediately start full review stage 2.
- (3) If the Minister makes a negative determination, the Minister must terminate the imposition of the duty under **section 17Y(1)**. 5
- (4) The Minister must give notice of a determination under **subsection (1)** as soon as practicable after the determination is made.
- (5) In this section,—
- affirmative determination** means a determination made by the Minister under **subsection (1)** that— 10
- (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and
- (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied 15
- negative determination** means a determination made by the Minister under **subsection (1)** that is not an affirmative determination.
- Full review stage 2: public interest*
- 17H Full review stage 2: investigation**
- (1) If the Minister directs the chief executive to start full review stage 2, the chief executive must investigate whether continuing to impose an anti-dumping or a countervailing duty at the rate or amount determined under **section 17G(2)(a)** is in the public interest. 20
- (2) Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. 25
- (3) In investigating whether continuing to impose the duty is in the public interest, the matters the chief executive must investigate include those referred to in **section 10F(3)**.
- (4) In this section,— 30
- consumers** means—
- (a) New Zealand consumers of—
- (i) the dumped or subsidised goods; or
- (ii) like goods; or
- (iii) the other goods referred to in **paragraph (a)** of the definition of downstream industries; and 35
- (b) if the Minister considers it appropriate for the purposes of this section, any other relevant New Zealand consumers

**domestic industry** means the industry referred to in **section 17G(1)(b)**

**downstream industries** means—

- (a) each immediate downstream New Zealand industry that uses the dumped or subsidised goods, or like goods, as an input in the production of other goods; and
- (b) if the Minister considers it appropriate for the purposes of this section, any other relevant downstream New Zealand industry.

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**17I Full review stage 2: procedure**

- (1) The chief executive must, within 60 days after starting full review stage 2, give the notified parties written advice of the preliminary findings that are likely to form the basis for a determination to be made by the Minister under **section 17J(1)**.
- (2) The chief executive must give all persons that the chief executive considers would be significantly affected by continuing to impose the duty a reasonable opportunity to present, in writing, all evidence relevant to full review stage 2 and, on justification being shown, to present that evidence orally.
- (3) **Subsection (1)** does not require the chief executive to provide information that would not be available to an interested party under **section 3F**.
- (4) The chief executive must report the findings of full review stage 2 to the Minister.

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**17J Full review stage 2: determination**

- (1) Within 90 days after the start of full review stage 2 (but not less than 30 days after the written advice is given by the chief executive under **section 17I(1)**), the Minister must determine whether continuing to impose the anti-dumping or countervailing duty is in the public interest (*see* **section 17H(2)**).
- (2) The Minister must give notice of a determination under **subsection (1)** as soon as practicable after the determination is made.

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*Full review: continued imposition of duty*

**17K Full review: continued imposition of duty**

- (1) If the Minister determines that continuing to impose the anti-dumping or countervailing duty is in the public interest, the Minister must continue to impose a duty, at the rate or amount determined under **section 17G(2)(a)**,—
  - (a) to be known as anti-dumping duty, in respect of those goods that are dumped:
  - (b) to be known as countervailing duty, in respect of those goods that are subsidised.
- (2) A duty that continues to be imposed under **subsection (1)**—

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- (a) replaces the existing duty with effect on and from the applicable date referred to in section 17; and
- (b) must be collected and paid on the demand of the Customs on and from the day after the date on which the notice under **subsection (3)** is published in the *Gazette*; and 5
- (c) ceases to be payable from the date that is the specified period after the date on which the duty has effect under **paragraph (a)**.
- (3) The Minister must give notice of the continued imposition of a duty under **subsection (1)** as soon as practicable after the imposition is made.
- (4) If the Minister determines that continuing to impose the duty is not in the public interest, the Minister must terminate the imposition of the duty under **section 17Y(1)**. 10

### Subpart 2—Limited review

#### 17L Purpose of limited review

The purpose of a limited review is to investigate, in relation to an anti-dumping or a countervailing duty, 1 or more of the following: 15

- (a) whether the scope of goods subject to the duty should be reduced;
- (b) whether an exporter should be exempted from the duty;
- (c) whether continued imposition of the duty is necessary to offset dumping;
- (d) whether material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty were removed or varied. 20

#### 17M Start of limited review

- (1) The chief executive may start a limited review of a duty—
  - (a) after receiving an application from an interested party that includes positive evidence justifying the need for a limited review; or 25
  - (b) at the chief executive's discretion.
- (2) The chief executive must give notice of a decision to start a limited review as soon as practicable after the decision is made, and that notice must include the date on which the limited review started or will start. 30

#### 17N Limited review: investigation

- (1) The chief executive must investigate, in relation to an anti-dumping or a countervailing duty, 1 or more of the matters referred to in **section 17L**.
- (2) However, if the matters in **section 17L(1)(c) and (d)** are both to be investigated, the chief executive must not start a limited review and must instead start a full review under **subpart 1**. 35

- (3) The chief executive must, within 150 days after starting a limited review, give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under **section 17O(1)**.
- (4) The chief executive must give interested parties a reasonable opportunity— 5
- (a) to present, in writing, all evidence relevant to the limited review and, on justification being shown, to present that evidence orally; and
  - (b) on request by an interested party, to meet other interested parties with adverse interests in order that they may present opposing views.
- (5) **Subsection (3)** does not require the chief executive to provide information that would not be available to an interested party under **section 3F**. 10
- (6) The chief executive must report the findings of the limited review to the Minister.
- 17O Limited review: determination**
- (1) Within 180 days after the start of the limited review (but not less than 30 days after the written advice is given by the chief executive under **section 17N(3)**), the Minister must determine each matter being investigated. 15
- (2) The Minister must give notice of a determination as soon as practicable after the determination is made.
- (3) A determination has effect on and from the day after the date on which the notice under **subsection (2)** is published in the *Gazette*. 20
- (4) If the Minister determines that the scope of goods subject to the duty should be reduced, the duty ceases to be payable on those goods that are no longer within the scope of the duty on and from the day after the date on which the notice under **subsection (2)** is published in the *Gazette*. 25
- (5) If the Minister determines that an exporter should be exempted from the duty, that exporter is exempt from the duty on and from the day after the date on which the notice under **subsection (2)** is published in the *Gazette*.
- (6) The Minister must terminate the imposition of the duty under **section 17Y(1)** if the Minister determines that— 30
- (a) continued imposition of the duty is not necessary to offset dumping; or
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would not be likely to continue or recur if the duty were removed or varied.

## Subpart 3—Reassessment

**17P Purpose of reassessment**

The purpose of a reassessment is to reassess the rate or amount of an anti-dumping or a countervailing duty (which may include any element of a formula used to establish the rate or amount).

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**17Q Start of reassessment**

(1) The chief executive may start a reassessment of the rate or amount of an anti-dumping or a countervailing duty—

- (a) after receiving a request from an interested party that includes positive evidence justifying the need for a reassessment; or
- (b) at the chief executive's discretion.

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(2) The chief executive must give notice of a decision to start a reassessment as soon as practicable after the decision is made, and that notice must include the date on which the reassessment started or will start.

**17R Reassessment of rate or amount of duty**

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(1) The chief executive must carry out a reassessment of the rate or amount of the duty (which may include any element of a formula used to establish the rate or amount).

(2) The chief executive must give interested parties a reasonable opportunity—

- (a) to present, in writing, all evidence relevant to the reassessment and, on justification being shown, to present that evidence orally; and
- (b) on request being made by an interested party, to meet other interested parties with adverse interests in order that they may present opposing views.

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(3) The chief executive must report the findings of a reassessment to the Minister.

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**17S Reassessment determination**

(1) The Minister must determine a reassessed rate or amount of the duty (which may be the same rate or amount as applied before the reassessment).

(2) The Minister must give notice of a determination under **subsection (1)** as soon as practicable after the determination is made.

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(3) **Section 10E** applies (with all necessary modifications) to the reassessment determination as if the reassessment determination were a determination under **section 10D(2)(a)**.

(4) The reassessed duty—

- (a) replaces the existing duty with effect on and from the applicable date referred to in section 17; and

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- (b) must be collected and paid on the demand of the Customs on and from the day after the date on which the notice under **subsection (2)** is published in the *Gazette*; and
  - (c) ceases to be payable from the date that the original duty would, but for the reassessment, have ceased to be payable in accordance with **section 13A(1) and (2)**. 5
- (5) If a reassessment results in a lower rate or amount of duty being imposed on goods, the Minister may require the Customs to refund, with effect from the date of the start of the reassessment, the difference between the duty paid and the lower rate or amount of duty. 10

#### Subpart 4—New exporter reassessment

##### **17T Purpose of new exporter reassessment**

The purpose of a new exporter reassessment is to reassess the rate or amount of an anti-dumping or a countervailing duty (which may include any element of a formula used to establish the rate or amount) in respect of a new exporter. 15

##### **17U Start of new exporter reassessment**

- (1) The chief executive may start a new exporter reassessment of the rate or amount of an anti-dumping or a countervailing duty after receiving a request from a new exporter that submits positive evidence justifying the need for a new exporter reassessment. 20
- (2) The chief executive must give notice of a decision to start a new exporter reassessment as soon as practicable after the decision is made, and that notice must include the date on which the new exporter reassessment started or will start.

##### **17V New exporter reassessment of rate or amount of duty**

- (1) The chief executive must carry out a reassessment of the rate or amount of the duty (which may include any element of a formula used to establish the rate or amount) in respect of the new exporter. 25
- (2) The chief executive must give interested parties a reasonable opportunity—
  - (a) to present, in writing, all evidence relevant to the new exporter reassessment and, on justification being shown, to present that evidence orally; 30
  - (b) on request by an interested party, to meet other interested parties with adverse interests in order that they may present opposing views.
- (3) The chief executive must report the findings of a new exporter reassessment to the Minister. 35

**17W New exporter reassessment determination**

- (1) The Minister must determine a reassessed rate or amount of the duty for the new exporter (which may be the same rate or amount as for other exporters).
- (2) The Minister must give notice of a determination under **subsection (1)** as soon as practicable after the determination is made. 5
- (3) **Section 10E** applies (with all necessary modifications) to the new exporter reassessment determination as if the new exporter reassessment determination were a determination under **section 10D(2)(a)**.
- (4) The reassessed duty—
  - (a) has effect for the new exporter on and from the applicable date referred to in section 17; and 10
  - (b) must be collected and paid on the demand of the Customs on and from the day after the date on which the notice under **subsection (2)** is published in the *Gazette*; and
  - (c) ceases to be payable from the date that the original duty ceases to be payable in accordance with **section 13A(1) and (2)**. 15

**17X Imposition of duty during new exporter reassessment**

- (1) No anti-dumping or countervailing duty may be imposed on goods imported from a new exporter during a new exporter reassessment.
- (2) Despite **section 17W(4) and subsection (1)**, a duty reassessed under **section 17W** may be retrospectively imposed to have effect for the period during a new exporter reassessment. 20
- (3) Despite **subsection (1)**, the Minister may, by notice, give a provisional direction that payment of an anti-dumping or a countervailing duty at the residual rate in respect of goods that are subject to a new exporter reassessment must be secured in accordance with sections 156 and 157 of the Customs and Excise Act 1996. 25
- (4) A provisional direction given under **subsection (3)** ceases to have effect following a determination made by the Minister under **section 17W**.
- (5) If a provisional direction given under **subsection (3)** ceases to have effect, security given under the provisional direction must be released, except to the extent that duties are payable on goods imported before the direction ceased to have effect. 30
- (6) If the amount of duty imposed under a provisional direction under **subsection (3)** exceeds the amount of duty determined under **section 17W**, the amount of the excess must be remitted by the Customs if required by the Minister. 35
- (7) If the amount of duty imposed under a provisional direction under **subsection (3)** is less than the amount of duty determined under **section 17W**, the amount of the difference must not be collected on those importations subject to the provisional direction. 40

Subpart 5—Termination

**17Y Termination of anti-dumping or countervailing duty**

- (1) The Minister may, by notice, terminate, in whole or in part, the imposition of an anti-dumping or a countervailing duty.
- (2) The date of termination specified in the notice may be before the date of the notice. 5

**Part 7**

**Third country anti-dumping and countervailing duties**

**22 Section 18 amended (Third country anti-dumping and countervailing duties) 10**

- (1) In section 18, replace “Where the Government” with “This section applies if the Government”.
- (2) In section 18(b)(ii), replace “retarded,—” with “retarded.”
- (3) In section 18, delete “the provisions of this Act (including, without limitation, sections 10, 11, 14, 15, 16, 17, 17A, and 17B) shall, with all necessary modifications, apply with respect to the effect of those goods on that third country’s domestic industry in the same manner as they apply with respect to the effect of those goods on a New Zealand industry.” 15
- (4) In section 18, insert as subsections (2) and (3):
  - (2) The provisions of this Act apply with all necessary modifications as if— 20
    - (a) references to the effect of the goods on a New Zealand industry were references to the effect of those goods on the third country’s domestic industry; and
    - (b) references to New Zealand producers in sections 3A, 8(2), **10(1) and (3), 10A(1)(b)**, and 11(1) were references to producers of that third country; and 25
    - (c) references to New Zealand production or domestic production in sections 3A(b), **10(3)(c), and 10A(1)(b)** were references to production in that third country; and
    - (d) references to New Zealand industry in sections 8(1)(c) and 11(1)(b) were references to the domestic industry of that third country; and 30
    - (e) the reference to goods produced in New Zealand in **section 10F(3)(b)** were a reference to goods produced in that third country; and
    - (f) the reference to production or consumption in New Zealand in section 8(2)(a) were a reference to production or consumption in— 35
      - (i) New Zealand; or

- (ii) if the Minister considers it appropriate, a combination of both New Zealand and that third country; and
- (g) references to domestic consumption in **section 10A(1)(b)** were references to consumption in that third country; and
- (h) in **sections 10F(4) and 17H(4)**, **domestic industry** meant— 5
- (i) the New Zealand domestic industry (if any); or
- (ii) if the Minister considers it appropriate, a combination of both the New Zealand domestic industry (if any) and the domestic industry of that third country.
- (3) However,— 10
- (a) references to prices in section 8(1)(b) and (2)(b) and (d)(ii) and **section 10(3)(I)** remain references to prices in New Zealand; and
- (b) references to downstream industries and consumers in **sections 10F(4) and 17H(4)** remain references to New Zealand downstream industries and New Zealand consumers. 15

**Example**

The Government of country X advises the chief executive that—

- goods imported into New Zealand were produced in country Y:
- those goods have been dumped:
- by reason of the dumping, material injury to a domestic industry of country X has been caused. 20

The provisions of this Act apply as if references to the effect of those goods on a New Zealand industry were references to the effect of those goods on country X's domestic industry.

- 23 New Part 8 heading inserted** 25
- After section 18, insert:

**Part 8**  
**Savings**

- 24 Section 19 amended (Savings)**
- (1) In section 19(4), replace “section 14(6)” with “**subpart 3 of Part 6**”. 30
- (2) In section 19(4), replace “section 14(4)” with “**section 10D(2)(a)**”.

- 25 New Schedule 1 inserted**
- Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

**26 Amendments to replace references to Secretary**

In the provisions specified in **Schedule 2**, replace “Secretary” with “chief executive” in each place.

**Part 2**

**Consequential amendments to other enactments**

5

**27 Consequential amendments to other enactments**

- (1) Amend the Acts specified in **Part 1 of Schedule 3** as set out in that schedule.
- (2) Amend the regulations specified in **Part 2 of Schedule 3** as set out in that schedule.

**Schedule 1**  
**New Schedule 1 inserted**

s 25

**Schedule 1**  
**Transitional, savings, and related provisions**

5

s 3BB

**Part 1**  
**Provisions relating to Trade (Anti-dumping and Countervailing Duties) Amendment Act 2016**

- 1 Interpretation** 10
- In this part, **commencement** means the date that the Trade (Anti-dumping and Countervailing Duties) Amendment Act **2016** comes into force.
- 2 Existing investigations, reassessment, and reviews**
- (1) This clause applies if, before commencement, the Secretary initiates— 15
- (a) an investigation under section 10; or
- (b) a reassessment under section 14(6); or
- (c) a review under section 14(8).
- (2) The investigation, reassessment, or review must be continued, completed, determined, and enforced as if the provisions of this Act (as in force immediately before commencement) were still in force. 20
- (3) This clause is subject to **clause 3**.
- 3 Application of public interest test to newly imposed duties**
- (1) This clause applies if, following an investigation or a review initiated before commencement, an anti-dumping or a countervailing duty is imposed with effect on and from— 25
- (a) commencement; or
- (b) a date after commencement; or
- (c) a date in the period starting 3 months before commencement and ending immediately before commencement.
- (2) The chief executive may, within 6 months from the appropriate date referred to in **subclause (1)(a) to (c)**, start a stand-alone investigation to consider whether continuing to impose the anti-dumping or countervailing duty is in the public interest. 30

- (3) The chief executive must give notice of a decision to start an investigation as soon as practicable after the decision is made, and that notice must include the date on which the investigation started or will start.
- (4) **Sections 17H to 17J** apply with all necessary modifications as if—
- (a) the investigation were stage 2 of a full review; and 5
  - (b) in **section 17H(1)**, the reference to the rate or amount determined under **section 17G(2)(a)** were a reference to the rate or amount already imposed; and
  - (c) in **section 17H(4)**, **domestic industry** meant the industry that was the subject of the original investigation (or review) that led to the duty being imposed. 10
- (5) If the Minister determines that continuing to impose the duty is in the public interest,—
- (a) the Minister must continue to impose the duty; and
  - (b) the period that the duty remains payable for is not affected. 15
- (6) If the Minister determines that continuing to impose the duty is not in the public interest, the Minister must terminate the imposition of the duty under **section 17Y(1)**.
- (7) The Minister must give notice of the continued imposition of a duty under **subclause (5)** as soon as practicable after the determination is made. 20
- 4 Investigations, full reviews, limited reviews, reassessments, and new exporter reassessments started on or after commencement**
- (1) This clause applies if, on or after commencement, the chief executive starts—
- (a) an investigation under **Part 4**; or
  - (b) a full review under **subpart 1 of Part 6**; or 25
  - (c) a limited review under **subpart 2 of Part 6**; or
  - (d) a reassessment under **subpart 3 of Part 6**; or
  - (e) a new exporter reassessment under **subpart 4 of Part 6**.
- (2) The investigation, full review, limited review, reassessment, or new exporter reassessment must be started, completed, determined, and enforced in accordance with the provisions of this Act (as amended by the Trade (Anti-dumping and Countervailing Duties) Amendment Act **2016**). 30
- (3) **Subclause (2)** applies regardless of whether the anti-dumping or countervailing duty that is the subject of the full review, limited review, reassessment, or new exporter reassessment was imposed— 35
- (a) before, on, or after commencement; or
  - (b) following an investigation, reassessment, or review referred to in **clause 2(1)**.

**Schedule 2**  
**Replacing references to “Secretary” with references to “chief executive”**

	<b>s 26</b>
Section 3(2)(c) and (3)	5
Section 4(1)(b)(iii) and (c) and (2)	
Section 5(2) to (6)	
Section 6(1) and (2)	
Section 7(1) and (5)	
Section 8(1) to (3)	10
Section 11(3)	
Section 14A(3)(b) and (c) and (5) to (7)	
Section 15(1) and (7)	
Section 16(2)	
Section 18	15



**Schedule 3**  
**Consequential amendments to other enactments**

**s 27**

**Part 1**  
**Consequential amendments to Acts** 5

**Customs and Excise Act 1996 (1996 No 27)**

In section 2(1), definition of **duty**, replace paragraph (c) with:

- (c) a duty imposed pursuant to the Trade (Anti-dumping and Countervailing Duties) Act 1988; and

In section 102(4), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”. 10

In section 113(5), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”.

In section 116(7), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”. 15

In section 117(8), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”.

**Trade (Safeguard Measures) Act 2014 (2014 No 66)**

In section 4(3)(a), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”. 20

In section 4(3)(b), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”.

**Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)**

In Schedule 1, under the heading **Category 1**, replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”. 25

**Part 2**  
**Consequential amendment to regulations**

**Customs and Excise Regulations 1996 (SR 1996/232)**

In clause 70(3)(b), replace “Dumping and Countervailing Duties Act 1988” with “Trade (Anti-dumping and Countervailing Duties) Act 1988”. 30