



Trade (Anti-dumping and Countervailing Duties) Amendment Act 2017

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Commencement see section 2

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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 2017.

2 Commencement

- (1) Section 16(1), (3), and (4) comes into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force immediately after the expiry of the 6-month period that starts on the date on which it receives the Royal assent.

3 Principal Act

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4 Long Title repealed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

- (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.
- (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

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 its obligations as a party to 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.

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 purpose of this Act and defines terms and expressions used in this Act;
 - (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;
 - (d) Part 4 contains provisions related to investigations (including a public interest test);
 - (e) Part 5 contains provisions regarding how an anti-dumping or a countervailing duty is imposed;
 - (f) Part 6 contains provisions about review and reassessment as follows:
 - (i) subpart 1 describes full reviews (including a public interest test);
 - (ii) subpart 2 describes limited reviews;
 - (iii) subpart 3 describes reassessments;

- (iv) subpart 4 describes new exporter reassessments:
- (v) subpart 5 contains a provision regarding the termination of anti-dumping or countervailing duties:
- (g) Part 7 contains provisions regarding third country anti-dumping duties.

1C Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

7 Section 2 repealed (Application)

Repeal section 2.

8 Section 3 amended (Interpretation)

- (1) In section 3(1), insert in their appropriate alphabetical order:

chief executive means the chief executive of the Ministry

emergency has the meaning given to it in section 4 of the Civil Defence Emergency Management Act 2002

full review stage 1 means stage 1 of a full review as described in sections 17F and 17G

full review stage 2 means stage 2 of a full review as described in sections 17H to 17J

investigation step 1 means step 1 of an investigation as described in sections 10C to 10E

investigation step 2 means step 2 of an investigation as described in sections 10F to 10H

new exporter 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
- (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

notified parties 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
- (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

specified period means (other than in section 14AA),—

- (a) in the case of goods of Singaporean origin, 3 years; and
 - (b) in the case of goods of any other origin, 5 years
- (2) In section 3(1), definition of **day**, replace “sections 14(2), 17, and 17B(4)” with “sections 13A(1), 17, 17B(4), 17K(2), 17O(3) to (5), 17S(4), and 17W(4)”.
- (3) In section 3(1), repeal the definition of **Secretary**.

9 New section 3BB inserted (Transitional, savings, and related provisions)

After section 3BA, insert:

3BB Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

10 New Part 2 and new Part 3 heading inserted

After section 3D, insert:

Part 2

Notice and access to information

3E Notice and written advice

- (1) For the purposes of this Act, a reference to a **notice** 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
 - (c) is given to the notified parties; and
 - (d) is published in the *Gazette*.
- (2) Notice may be given under subsection (1)(c)—
- (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.

- (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.
- (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
 - (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
 - (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.
- (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:
- (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—
 - (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)

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

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, by a properly documented application, 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.
- (2) A properly documented application must be in writing and include evidence of—
 - (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.
- (3) A properly documented 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);
 - (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:
- (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):
- (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):
- (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:
- (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 paragraphs (l) and (m).

10A Start of investigation

- (1) The chief executive must start an investigation if the chief executive is satisfied from the evidence in the application that—
 - (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—
 - (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—
 - (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 subparagraph (i)) 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,—
 - (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.
- (3) Despite subsection (1), the chief executive must not start an investigation in relation to alleged dumping of goods of Australian origin.

Investigation steps

10B Investigation steps

- (1) If the chief executive starts an investigation under section 10A, the chief executive must carry out investigation step 1 first and then, if directed to do so by the Minister under section 10D(2), 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.

Step 1: dumping, subsidy, and material injury

10C Step 1: investigation

Dumping, subsidy, and material injury

- (1) If the chief executive starts an investigation, 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.

Procedure

- (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 section 10D(1).
- (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) 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,—
 - (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.
- (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
 - (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.
- (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,—

- (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.

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—
 - (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
 - (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,—
 - (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.
- (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.
- (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:
 - (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 performance of the domestic industry:
 - (f) the effect of the duty on employment levels:
 - (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—

(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

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

(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).

(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.

(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.

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)).

(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) or, if appropriate, section 10D(1)”.
- (2) In section 11(1)(e), replace “section 10(3)” with “section 10A(1)(b)”.
- (3) In section 11(1)(e), replace “initiated” with “started”.
- (4) In section 11(3), replace “initiate” with “start”.
- (5) In section 11(4), replace “initiation” with “start”.

15 Sections 13 and 14 replaced

Replace sections 13 and 14 with:

Part 5**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),—
 - (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.
- (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.

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 Customs on and from the day after the date on which the notice under section 13(2) is published in the *Gazette*; and
 - (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.

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,—
- (a) defer imposing a duty; or
 - (b) elect not to impose a duty.
- (2) If the Minister defers imposing a duty,—
- (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.
- (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.

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

- (1) In section 14AA(1), replace “31 May 2017” with “30 June 2019”.
- (2) In section 14AA(2)(a), replace “section 14(1)” with “section 13(1)”.
- (3) Replace section 14AA(2)(b) with:
- (b) existing anti-dumping duties on standard plasterboard from Thailand are suspended.
- (4) In section 14AA(3) and (4), replace “1 June 2017” with “1 July 2019”.
- (5) In section 14AA(5)(a), replace “section 14(7)” with “section 17Y”.
- (6) After section 14AA(5), insert:
- (6) The following are repealed on 31 July 2019:
- (a) this section:
 - (b) in section 3(1), the definitions of **building material** and **residential building material**.

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.

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”.
- (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

17C Purpose of full review

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.

17D Start of full review

- (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.
- (2) The chief executive may start a full review of a duty at the chief executive's discretion.
- (3) Subsection (4) applies if—
 - (a) the chief executive starts a full review of an existing duty; and
 - (b) the duty would, apart from subsection (4), 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 section 17G(1); 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 section 17K(2).

17E Full review stages

- (1) If the chief executive starts a full review under section 17D, the chief executive must carry out full review stage 1 first and then, if directed to do so by the Minister under section 17G(2), 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.

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

17F Full review stage 1: investigation

Dumping, subsidy, and material injury

- (1) If the chief executive starts a full review, the chief executive must 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.

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).
- (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.
- (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.

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—
 - (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—
 - (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).
- (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—

- (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

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.
- (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.
- (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,—

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
- (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.

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.

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.

*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)—
 - (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 Customs on and from the day after the date on which the notice under subsection (3) is published in the *Gazette*; and
 - (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).

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:

- (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.

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

(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.

17N Limited review: investigation

- (1) If the chief executive starts a limited review under section 17M, 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.
- (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—
- (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.
- (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.
- (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*.
- (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*.
- (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—
- (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).

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.
- (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

- (1) If the chief executive starts a reassessment under section 17Q, 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.
- (3) The chief executive must report the findings of a reassessment to the Minister.

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.

- (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
 - (b) must be collected and paid on the demand of 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) If a reassessment results in a lower rate or amount of duty being imposed on goods, the Minister may require 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.

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.

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.
- (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) If the chief executive starts a new exporter reassessment under section 17U, 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.
- (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; and

- (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.

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.
- (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
 - (b) must be collected and paid on the demand of 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).

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.
- (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.
- (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.

- (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 Customs if required by the Minister.
- (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.

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.

Part 7

Third country anti-dumping duties

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

- (1) In the heading to section 18, delete “**and countervailing**”.
- (2) In section 18, replace “Where the Government” with “This section applies if the Government”.
- (3) In section 18(a)(ii), delete “or subsidised”.
- (4) In section 18(b), delete “or subsidisation”.
- (5) In section 18(b)(ii), replace “retarded,—” with “retarded.”
- (6) 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.”
- (7) In section 18, insert as subsections (2) and (3):
 - (2) The provisions of this Act apply with all necessary modifications as if—
 - (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

- (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
- (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—
- (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—
- (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,—
- (a) references to prices in section 8(1)(b) and (2)(b) and (d)(ii) and section 10(3)(l) 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.

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.

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 Section 19 repealed (Savings)

Repeal section 19.

24 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.

25 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****26 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 24

Schedule 1
Transitional, savings, and related provisions

s 3BB

Part 1
Provisions relating to Trade (Anti-dumping and Countervailing Duties) Amendment Act 2017

1 Interpretation

In this Part, **commencement** means the date immediately after the expiry of the 6-month period that starts on the date on which the Trade (Anti-dumping and Countervailing Duties) Amendment Act 2017 receives the Royal assent.

2 Existing investigations, reassessment, and reviews

- (1) This clause applies if, before commencement, the Secretary initiated—
 - (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.
- (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—
 - (a) commencement; or
 - (b) a date after commencement.
- (2) The chief executive may, within 6 months from the date on which the duty is imposed, start a stand-alone investigation to consider whether continuing to impose the anti-dumping or countervailing duty is in the public interest.
- (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
 - (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.
- (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.
- (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.

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
 - (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 2017).
- (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—
- (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”

s 25

Section 3(2)(c) and (3)

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)

Section 11(3)

Section 14A(3)(b) and (c) and (5) to (7)

Section 15(1) and (7)

Section 16(2)

Section 18

Schedule 3

Consequential amendments to other enactments

s 26

Part 1

Consequential amendments to Acts

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”.

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”.

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”.

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”.

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”.

Legislative history

8 June 2016	Introduction (Bill 143–1)
28 June 2016	First reading and referral to Commerce Committee
9 December 2016	Reported from Commerce Committee
14 February 2017	Second reading
23 May 2017	Committee of the whole House (Bill 143–2)
24 May 2017	Third reading
29 May 2017	Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.