

17 May 2016

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Trade (Anti-Dumping and Countervailing Duties) Amendment Bill

1. We have considered whether the Trade (Anti-Dumping and Countervailing Duties) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received the final version of the Bill. This advice has been prepared with the latest version of the Bill available at the time of writing (PCO 18910/1.26). We will provide you with further advice should the final version of the Bill include amendments that affect the conclusion in this advice.
3. 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.
4. 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.
5. The Trade (Anti-Dumping and Countervailing Duties) Amendment Bill introduces a public interest test into New Zealand's anti-dumping and countervailing duties regime by assessing the extent to which the cost, to New Zealand downstream industries and consumers, of imposing a duty materially outweighs the benefit to the New Zealand industry of imposing a 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.
6. This Bill also introduces a test which would allow for an anti-dumping and a countervailing duty to be deferred, not imposed, terminated, or suspended if users of the goods subject (or potentially subject) to the duty have been significantly impacted by a natural disaster or other emergency.
7. This Bill also makes a number of minor and technical changes which 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 points:
 - a) the decision making process on the outcome of a review of an existing duty:

- b) consistency in application of the rules on evidence and procedure to investigations and reviews and reassessments of an existing duty:
- c) imposition of a separate rate of duty for named exporters and a residual rate of duty to all other exporters:
- d) new exporter reassessments resulting in separate rates of duty for new exporters or exempting new exporters from a duty:
- e) limited reviews in relation to the scope of the goods subject to a duty and exemption of exporters from the payment of the duty.

8. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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