# Regulatory Impact Statement

## Options Regarding the Development of a Public Interest Test for New Zealand's Anti-Dumping and Countervailing Duties Regime

### Agency Disclosure Statement

1 This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE). Treasury, the New Zealand Customs Service (Customs) and the Ministry of Foreign Affairs and Trade (MFAT) have been consulted in the formation of proposals.

2 In June 2015 Cabinet approved in principle a bounded public interest test (BPIT) for the anti-dumping and countervailing duties regime. At the same time Cabinet approved the release of a discussion paper on the introduction of an automatic termination period (ATP) for this regime on the basis that it would operate in conjunction with a BPIT. An ATP would require the termination of an anti-dumping or countervailing duty after a set period of time had elapsed since the duty was imposed. The in principle decision by Cabinet to introduce a BPIT was subject to any changes to its design that may be necessary in light of it operating in conjunction with an ATP.

3 This RIS provides an analysis of options regarding the development of a BPIT as a stand-alone option, a BPIT operating in conjunction with an ATP and ATP as a stand-alone option. A BPIT would allow consideration of the costs of imposing anti-dumping or countervailing duties (including the impact on competition) before a decision is made on whether or not the duties should be imposed.

4 Currently, there is no provision in New Zealand's trade remedies regime to consider the costs of imposing anti-dumping or countervailing duties. The regime is intended to protect New Zealand's producers from competition from unfairly-priced imports (through imposing duties at the border) where the imports are sold at (a) 'dumped' prices i.e. lower than the prices they are sold in their home market, or (b) subsidised prices i.e. where the imports have benefited from a subsidy provided by a foreign government; and (c) these imports are causing material injury to the New Zealand producers.

5 Under current legislation, and in accordance with World Trade Organisation (WTO) rules, an anti-dumping or countervailing duty ceases to be payable five years after it was imposed. A duty can, however, under current legislation be renewed at five yearly intervals without limit if a review finds there is a continued need for the duty to prevent a continuation or recurrence of dumping and material injury to the domestic industry.

6 In directing officials to develop a BPIT, Ministers have noted the need to have regard to the following elements: (a) that New Zealand retains an effective trade remedies regime which continues to provide an appropriate degree of protection against injurious dumping and/or subsidisation, and (b) the costs of the duties on downstream industries (which use the product as a production input) and consumers should be taken into account in a public interest test.

7 Quantified data has been used to the extent possible and the analysis includes estimates of the impact of introducing a BPIT into New Zealand's anti-dumping and countervailing duties regime. This analysis is limited by the difficulty in predicting what percentage of cases, where such a test is conducted, will result in the non-imposition of anti-dumping or countervailing duties and the difficultly in quantifying the benefits and costs of introducing

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such a test. The analysis includes estimates of the likely decrease in house prices of the non-imposition of anti-dumping duties on imported building materials. Assumptions include the use of an exemplar house to model the impact of cost savings from the non-imposition of these duties.

8 The options and analysis contained in this RIS have taken into account the elements above.

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## Executive summary

9 The Regulatory Impact Analysis (RIA) contained in this RIS has concluded that an ATP should not be introduced into the anti-dumping and countervailing duties regime either as a stand-alone alternative to a BPIT or as an addition to a BPIT. This RIS has also identified a preferred approach to the development of a public interest test.

10 The current test for imposing anti-dumping or countervailing duties is whether the imported goods are dumped or subsidised and causing or threatening to cause material injury to a domestic industry producing "like" goods to the imported goods. There is very little discretion for the Minister to take into account costs of imposing duties on downstream industries (who use the product as a production input), and consumers. While anti-dumping and countervailing duties expire 5 years after they are imposed, they can be renewed at 5-yearly intervals thereafter without limit if a review finds there is a continued need for the duty and can therefore potentially remain in place for prolonged periods.

11 The analysis has concluded that the preferred option is a public interest test "bounded" by restricting it to a consideration of the cost of anti-dumping and countervailing duties on downstream industries, and consumers. This is because it best meets the policy objective of increased competition and enhanced consumer welfare while also meeting the policy objective of retaining the effectiveness and underlying objective of the anti-dumping and countervailing duty regime. The assessment under this test would not extend to upstream industries (who supply production inputs to the domestic producers who the duties are designed to protect), nor would the test involve a total welfare analysis of the impact of duties.

12 The proposed test will assess the costs of imposing anti-dumping or countervailing duties on the imported product, including the extent to which the duties will negatively impact on prices in New Zealand, product and service quality, consumer choice or any other factor essential to ensuring the existence of competition in the market. The test will also assess the extent to which the harm of imposing duties on downstream industries, and consumers, is likely to be excessive compared to the benefit of imposing the duty to domestic producers.

13 In applying the test, anti-dumping and countervailing duties would be imposed unless in doing so the costs to downstream industries and consumers would be excessive relative to the benefits to a domestic industry. In this manner the test would also ensure that there is a presumption in favour of the imposition or continuation of a duty when there is a finding of injurious dumping or subsidisation. This presumption would be overturned only if the public interest assessment clearly finds that the cost of imposing or continuing the duty materially outweighs the benefit to the industry.

14 There would also be a specific discretionary provision relating to natural disasters, such as an earthquake. This provision would provide the responsible Minister with discretion to not impose anti-dumping or countervailing duties, or to remove or suspend existing duties where users or consumers of the product concerned have been adversely affected by a natural disaster, such as an earthquake, or other serious adverse events.

15 The test will contain a number of procedural requirements in relation to the public interest test, ranging from a public interest assessment being automatically conducted (if a dumping/subsidy investigation makes a finding of injurious dumping or subsidisation) to the responsible Minister making the final decision on whether or not to impose duties (after the public interest assessment has been conducted).

16 The proposed test is bounded in a manner which should retain the ability to impose (or

continue) anti-dumping or countervailing duties where domestic producers are incurring injury from dumped or subsidised imports while providing the ability to not impose (or continue) duties if the cost of imposing duties, on downstream industries and consumers, is excessive compared to the benefit of the duties to the domestic producers. It therefore strikes a balance between the desire by Government to preserve the effectiveness of the trade remedies regime but, takes into account the wider public interest with regard to the costs imposed on downstream industries and consumers in determining if anti-dumping or countervailing duties should be imposed.

## Introduction

17 Import barriers – namely tariffs and anti-dumping duties on residential construction materials – were two barriers to competition and productivity in the construction sector identified in a 2013 market study undertaken by the Ministry of Business, Innovation and Employment (MBIE).

18 In April 2014, Cabinet [CAB Min (14) 11/3] agreed, in principle, to reduce import barriers in the residential construction sector by:

a. introducing a temporary tariff concessions scheme for key residential construction materials;

b. temporarily suspending, for 3 years, the application of anti-dumping duties to residential construction materials by amending the Dumping and Countervailing Duties Act 1988 (the Act); and

c. directing officials to develop a bounded public interest test for the anti-dumping and countervailing duties regime, with a view to considering amendments to the Act once the public interest test has been developed.

19 Items a. and b. above were aimed at removing a barrier to competition and productivity in the construction sector, presented by tariffs and anti-dumping duties, particularly to support the Christchurch rebuild and increased residential construction needed in Auckland. The temporary suspension of anti-dumping duties was enacted through Budget-day legislation with effect from 1 June 2014. The introduction of tariff concessions was advanced through an Order in Council in June with effect from 1 July 2014.

20 The construction sector market study identified a wider problem with the anti-dumping and countervailing duties regime. The problem identified is that the regime protects New Zealand industry from material injury caused by the dumping or subsidising of goods from abroad but it does not take into account the risk that anti-dumping and countervailing duties can impose costs on downstream industries (which use the imported product as a production input) and consumers which are disproportionate to the benefits provided to domestic producers (who the duties are designed to protect). Also, there is no ability to consider significant events that affect an industry or the public, such as earthquakes or other natural disasters and for a decision to impose or not impose a duty to be made on the basis of this consideration.

21 The non-imposition of anti-dumping or countervailing duties or the removal of an existing duty may, in certain circumstances, result in net benefits for the New Zealand economy through increased competition from cheaper imports (e.g. more choice and lower prices) and increased pressure on domestic industries to reduce costs and innovate. These gains cannot, however, be taken into account under the current legislative test for imposing anti-dumping and countervailing duties.

22 The development of a public interest test (item c. above) - that is, a test which defines the public interest in a specific way - seeks to address that problem by taking into account the wider public interest before anti-dumping or countervailing duties are imposed.

23 Following the Cabinet decision referred to above and the subsequent agreement by Cabinet to the release of a discussion paper, MBIE consulted on options for the development of a bounded public interest test. In June 2015, Cabinet [CAB Min (15) 18/5] agreed in principle to the introduction of a BPIT for the anti-dumping and countervailing duties regime, subject to any changes necessary in light of the test operating in conjunction with an ATP (if Cabinet subsequently agrees to an ATP), on the following basis:

a. It is to be based on factors to be specified in legislation that take into account consideration of the imposition of anti-dumping or countervailing duties on downstream industries and consumers, and on New Zealand producers.

b. It will contain a presumption in favour of the imposition of anti-dumping or countervailing duties which would only be overturned where the costs to downstream industries and consumers materially outweigh the benefit to the domestic industry being protected from dumping and/or subsidisation.

c. A public interest assessment will automatically be conducted if a dumping or subsidy investigation finds that dumped or subsidised imports have caused or threaten to cause material injury to a domestic industry.

d. The government agency responsible for administering the Act would release a draft public interest finding, prior to making a recommendation to the responsible Minister on a final public interest finding.

e. The test would be completed within a specified number of days (90 days) from its initiation. Initiation of the public interest assessment would take place after a finding that dumped or subsidised imports have caused or threaten to cause material injury to a domestic industry. This initial investigation could take up to 180 days.

f. The public interest assessment would be conducted by the government agency responsible for administering the Act, and the responsible Minister would make the final decision on whether or not to impose duties.

24 In addition, Cabinet also agreed that the responsible Minister should be given the discretion to not impose or defer the imposition of anti-dumping or countervailing duties, or to remove or suspend existing duties, where a natural disaster or other national emergency (such as that defined under the Civil Defence Emergency Management Act 2002) has significantly impacted on the users of the product concerned.

25 A RIS was prepared on the introduction of a bounded public interest test in principle and can be found on MBIE's web site here: http://www.med.govt.nz/business/trade-tariffs/trade-remedies/public-interest-test-atp-for-the-anti-dumping-regime/regulatory-impact-station.pdf

26 Cabinet also agreed in June 2015 [CAB Min (15) 18/5] to the release of a supplementary discussion paper on options to introduce an ATP into the anti-dumping and countervailing duties regime to operate in conjunction with a BPIT. Cabinet's agreement to the release of this discussion paper resulted from the identification, during the development of a bounded public interest test, of another problem with the anti-dumping and countervailing duties regime.

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27 The problem identified is that anti-dumping or countervailing duties can remain in place for lengthy periods and become a form of long term industry protection. This can remove the incentive for a domestic industry to adjust to competition from imports. In many cases industry has applied for and been successful in having duties continue for at least a further 5 years after their initial 5-year imposition period.

## Status Quo: The Role of Anti-dumping and Countervailing Duties

*Anti-Dumping and Countervailing Duties*

28 Anti-dumping duties seek to remedy the injury caused by 'dumped' imports to New Zealand's domestic industries. Goods are dumped if the export price to New Zealand is less than the price they are sold for in the domestic market of the exporting country (the 'normal value').

29 Dumping is not illegal and in fact is a common international commercial practice that can be beneficial to both importing and exporting countries. However, where dumping causes or threatens to cause material injury to a New Zealand industry, anti-dumping duties can be imposed under strict World Trade Organisation (WTO) rules.

30 The following anti-dumping duties are currently in place are:

- Preserved peaches from China.
- Preserved peaches from Spain.
- Canned peaches from South Africa.
- Canned peaches from Greece.
- Galvanised wire from Malaysia.
- Plasterboard from Thailand.
- Wire nails from China.

31 Anti-dumping duties on three building products were suspended for 3 years with effect from 1 June 2014 to help lower costs in the building sector. These are anti-dumping duties on reinforcing steel bar and coil from Thailand, standard plasterboard from Thailand and wire nails from China (the duty on reinforcing steel bar and coil from Thailand was subsequently terminated in June 2015 as the result of a review of whether the duty was still necessary). The suspension also prevents the imposition of any new anti-dumping duties on residential building materials over the 3-year suspension period.

32 Countervailing duties are imposed to offset injury to a New Zealand industry caused by subsidised imported goods. Goods are subsidised when a foreign government provides its manufacturer or exporter of the goods with specific assistance, either directly or indirectly. New Zealand does not, currently, have any countervailing duties in place.

*The benefits and costs of anti-dumping and countervailing duties*

33 Anti-dumping and countervailing duties result in both benefits and costs to New Zealand. The benefits of anti-dumping and countervailing duties include:

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(i) Providing domestic industries with assurance that they can be protected against dumped, subsidised and injurious imports while the government undertakes trade liberalisation through the elimination of tariffs.

(ii) Protecting domestic employment through maintaining a strong domestic manufacturing presence.

(iii) Providing New Zealand industries with the confidence to invest, grow and compete, especially as tariffs are being reduced and eliminated under our free trade agreements.

The costs of anti-dumping and countervailing duties include:

(i) Hindering importers from competing on price, thus increasing costs which can negatively impact on downstream users and eventually consumers.

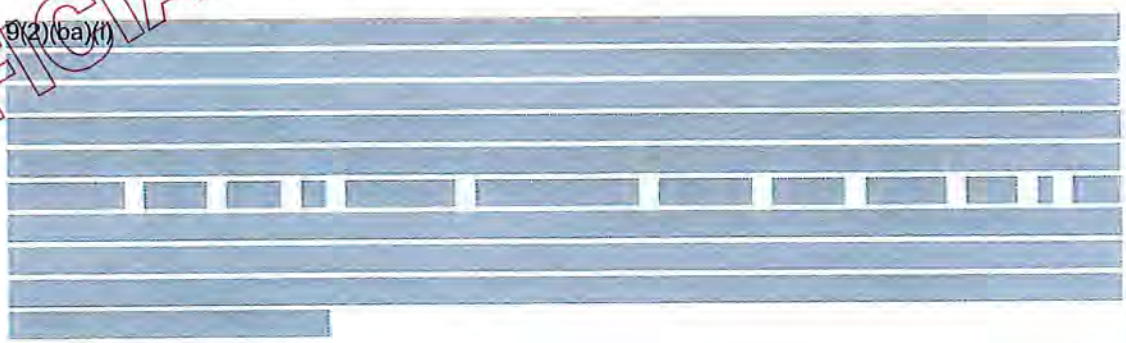
(ii) Distorting relative prices, therefore, potentially creating an inefficient allocation of resources.

(iii) Domestic industries (which use the imported good as a production input) face higher prices for inputs creating negative flow-on effects through the economy including end-users and consumers facing higher prices.

(iv) It is difficult to directly assess the magnitude of any *indirect* benefit arising from the introduction of a public interest test (and the possible non-application of duties) because the imposition of duties and even the threat of duties are likely to change the underlying behaviours and incentives of firms. For example, even firms not subject to anti-dumping or countervailing duties may be avoiding competing on price due to the potential for duties to be applied.

34 A 2013 United States study highlighted the negative impact anti-dumping duties can have on supply, finding that anti-dumping duties increase the likelihood of exit from the US market by foreign suppliers by more than fifty percent. The study also found that anti-dumping action may have a far greater welfare impact than generally recognised since firms may not try to enter a market in the first place if the destination industry is known to be aggressive users of anti-dumping.

35 9(2)(ba)(i)



36 Another drawback of anti-dumping duties is that domestic manufacturers may leverage any market power afforded by the duties to retain their market position in a much wider range of products (e.g. through product bundling). Limiting the ability of importers to compete on price in one product market (through the imposition of duties) could, therefore, lead to a reduction in competition in a much wider range of products.

*The legislation*

37 Anti-dumping and countervailing duties are imposed under the Dumping and Countervailing Duties Act 1988 (the Act). Under this Act, MBIE can initiate an investigation and recommend the Minister of Commerce and Consumer Affairs impose

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anti-dumping or countervailing duties if the investigation finds that dumped or subsidised goods have caused or threatened to cause material injury to a New Zealand industry.

38 Any duty imposed by the Minister cannot exceed the difference between the normal value and export price of the goods (considered the dumping margin) or the extent to which the goods are subsidised. However, the duty can be imposed at a lesser rate if this is sufficient to prevent material injury to the industry.

39 Anti-dumping and countervailing duties expire 5 years after they were imposed or last reviewed unless a review determines that the removal of the duty is likely to cause a continuation or recurrence of dumping or subsidisation and material injury.

40 The Act reflects the provisions of the relevant World Trade Organization (WTO) Agreements including the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* 1994 (known as the Anti-Dumping Agreement) and the *Agreement on Subsidies and Countervailing Measures*. Neither of these Agreements prevents a country from adopting a public interest test and/or an ATP into their domestic regimes.

*The current test - Injurious dumping/subsidisation*

41 The test for injurious dumping/subsidisation is a straightforward assessment of whether the domestic industry has suffered material injury or is threatened with material injury as a result of the dumping/subsidisation, relative to their position if there were no dumped or subsidised imports. Similarly, a review of an existing duty focuses on whether the removal of the duty is likely to cause a continuation or recurrence of material injury to a domestic industry through a continuation or recurrence of dumping or subsidisation.

42 The tests do not provide for consideration of the wider benefits that may arise as a result of the dumped or subsidised goods nor does it assess whether the current prices charged by the domestic industry are reasonable.

## Problem Definition

*The problem: Anti-dumping and countervailing duties can impose costs which are disproportionate to their benefits.*

43 The Act provides for the Minister of Commerce and Consumer Affairs to impose anti-dumping duties on imported goods if an investigation has found the goods are dumped or subsidised and have caused or threatened to cause material injury to a domestic industry producing the same type of goods.

44 In imposing anti-dumping and countervailing duties, there is a risk that the duties will impose costs which are disproportionate to the benefits. However, the Act does not allow for consideration of whether the costs anti-dumping and countervailing duties impose on parties such as downstream industries (who use the product concerned as a production input) and consumers, are disproportionate to the benefits to the domestic producers (who the duties are designed to protect) or upstream industries (who supply the domestic producers with production inputs).

45 Downstream industries and consumers will face costs as a result of the imposition of anti-dumping and countervailing duties. For example, in the context of the construction sector market study, MBIE received feedback from industry participants that anti-dumping duties are preventing them from offering lower prices in the New Zealand market, and are therefore acting as a barrier to competition and increasing the cost of residential construction. The current test for imposing duties also ignores that price discrimination is

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not necessarily indicative of unfair or predatory trading practices; rather it could be an efficient response to the different market conditions around the world.

46 The costs resulting from imposing anti-dumping and countervailing duties are exacerbated by unforeseen adverse natural events such as earthquakes or other natural disasters. For instance, the 2011 Christchurch earthquake resulted in a decrease supply of residential housing which led to significant price pressure on residential housing. In response the government suspended anti-dumping duties on imports of residential construction material to decrease prices of these imports and introduce more competitiveness to the construction sector.

47 Also, there is no ability to consider significant events that affect an industry or the public, such as earthquakes or other natural disasters and for a decision to impose or not impose a duty to be made on the basis of this consideration.

48 It is difficult to directly assess the impact of anti-dumping or countervailing duties on any one sector in an economy. This is because the duties, and even the threat of duties, are likely to change the underlying behaviours and incentives of firms. For example, even firms not subject to anti-dumping duties may be avoiding competing on price due to the potential for duties to be applied.

## Objectives

49 Three overarching policy objectives in relation to the above problem have been identified. These objectives are:

1. Preferred option will result in increased competition and enhanced consumer welfare.
2. Preferred option will retain the effectiveness and underlying objective of the anti-dumping and countervailing duty regime, i.e. it will ensure that domestic industries continue to have the ability to effectively seek anti-dumping and countervailing duties when faced with injurious dumped or subsidised goods.[1]
3. Preferred option will enable a quick decision (at short notice) to not impose or defer the imposition of duties or to remove or suspend existing duties where a natural disaster such as an earthquake has significantly impacted on users of the product concerned.

50 There is an inherent tension between policy objectives 1 and 2, in that the more an option has the ability to result in increased competition and enhanced consumer welfare, the less able the option is able to retain the effectiveness of the anti-dumping and countervailing duty regime in continuing to provide an appropriate degree of protection against injurious dumping and/or subsidisation. This is because an option which more effectively meets policy objective 1 would result in duties being imposed in fewer cases of dumping, while an option which more effectively meets policy objective 2 would result in duties being imposed in more cases of dumping.

51 MBIE has also identified the following (specific) assessment criteria which inform how a potential regulatory solution will be evaluated for effectiveness.

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[1] This is a policy objective because of the desire by Government to strike a balance between the preservation of the effectiveness of the trade remedies regime and the taking into account the wider public interest with regard to the costs imposed on downstream industries and consumers. The benefits of preserving the effectiveness of the regime are set out in paragraph 33 above.



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1. The preferred option should impose low administration and compliance costs.

2. The preferred option should promote regulatory certainty (e.g. where possible rules should not be vague and open to wide interpretation).

## Approaches by Other Jurisdictions

52 Two significant WTO Members which have chosen to implement a public interest test are the European Union (EU) and Canada. Both Members have chosen to implement bounded public interest tests which include consideration of both upstream and downstream industries. The EU test includes a presumption in favour of duties if dumping or subsidisation and material injury are found whereas the Canadian test only applies once duties have been imposed and considers whether duties should be reduced. In the EU, wider public interest considerations have overridden this presumption (so that no duties are imposed) in a limited number of cases.

53 Canada's test differs to the European Union one in that while it is broadly applicable, it is only applied on request by an interested party. Since 1990, the public interest test has only been considered by Canadian authorities in five cases and a further 12 requests have been rejected. A reduction of duties was recommended in four cases and the Canadian government accepted this in three of the cases.

54 In 2009, the Australian Productivity Commission reviewed Australia's anti-dumping regime and, as part of its review, formulated a bounded public interest test that could be integrated into the Australian regime. The Australian Government decided not to adopt the Commission's recommendation for a bounded public interest test, noting in particular that the Australian regime provides for Ministerial discretion to take into account public interest considerations. The New Zealand regime provides very little discretion.

## Public Interest Test in the Trade (Safeguard Measures) Act 2014

55 The Trade (Safeguard Measures) Act 2014 includes an unbounded public interest test. The matters which may be considered include the likely effectiveness of a safeguard measure in assisting the domestic industry, the alternatives to a safeguard measure and the likely effect of a safeguard measure on the market (including on consumers).

56 An unbounded public interest test was considered appropriate for the Trade (Safeguard Measures) Act 2014 because a safeguard measure is seen as a more significant form of trade remedy (than anti-dumping and countervailing duties) in that it applies to imports from all countries, does not require that imports are dumped or subsidised and the rate or amount of the measure can be as large as is required to prevent or remedy serious injury to the domestic industry. This justifies a more stringent examination of whether its imposition is in the public interest.

## The Options (described)

**Status Quo** (i.e. no change to the test for imposing anti-dumping or countervailing duties): The test for whether or not to impose anti-dumping or countervailing duties would remain an injurious dumping or subsidisation test, i.e. duties would be imposed if goods were either dumped or subsidised and were causing or threatening to cause material injury to a domestic industry.

**Option A:** A test which allows consideration of the impact of anti-dumping or countervailing duties on downstream industries (that use the product as a production input in the production of goods exported or sold domestically), plus a natural disaster provision.

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**Option B:** A test which allows consideration of the impact of anti-dumping or countervailing duties on downstream industries, and consumers, plus a natural disaster provision.

**Option C:** A test which allows consideration of the impact of anti-dumping or countervailing duties on downstream industries, consumers and upstream industries. Upstream industries supply production inputs to the domestic producers (who the duties are designed to protect). This option would include a natural disaster provision.

**Option D:** A test which allows for a total welfare analysis when imposing anti-dumping or countervailing duties (an unbounded public interest test), plus a natural disaster provision.

**Option E:** Introduction of an automatic termination period into the anti-dumping and countervailing duties regime as a stand-alone option, plus a natural disaster option.

**Option F:** Introduction of an automatic termination period into the anti-dumping and countervailing duties regime in conjunction with a bounded public interest test, plus a natural disaster option.

## The Options (analysed)

**The Status Quo** (no change to the test for imposing anti-dumping or countervailing duties)

### Option summary

57 Under this option, the Act would remain unchanged. There would continue to be very little discretion for the Minister to take into account costs of imposing duties. The test to impose anti-dumping or countervailing duties would remain whether the goods are dumped or subsidised and are causing or threatening to cause material injury to the domestic industry. Under this option the government could amend the legislation in the case of a natural disaster or other emergency (as was done when anti-dumping duties were suspended on imports of building materials) but this would be a very blunt ad hoc means to address this issue.

### Comments by Submitters

58 Of the three options consulted on, thirteen of the twenty submitters favoured retaining the anti-dumping mechanism as it currently stands. However, submitters noted that this option does not provide the flexibility to weigh up competing interests and consider the wider impact on the economy of imposing anti-dumping duties.

### Does the status quo meet the policy objectives and (specific) assessment criteria identified above?

59 This option maintains the effectiveness and objective of the anti-dumping and countervailing duties regime, provides regulatory certainty (because the discretion to impose duties is limited and the criteria are unambiguous), and it imposes relatively low administration and compliance costs (because the test is limited and clearly defined).

60 However, this option does not result in increased competition and enhanced consumer welfare and it does not allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product concerned.

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## **Option A:** Considers the impact of anti-dumping or countervailing duties on downstream industries (that use the product as a production input in the production of goods exported or sold domestically)

### Option summary

61 This option would allow the Minister to consider factors other than whether or not the goods are dumped or subsidised and causing injury to a domestic industry (the current test), when imposing an anti-dumping or countervailing duty. The test would consider the impact of anti-dumping or countervailing duties on downstream industries. Downstream industries use the product as a production input in the production of goods exported or sold domestically.

62 There would also be provision for the responsible Minister to have discretion to not impose duties or to remove or suspend existing duties where a natural disaster such as an earthquake has significantly impacted on users of the product concerned. Such a provision would allow MBIE to quickly, and at short-notice, assess the merits of imposing or maintaining anti-dumping or countervailing duties on a particular product where users or consumers of the product have been affected by a natural disaster or similar serious adverse event.

63 In this respect, the test would stand on its own rather than needing to conform to the parameters and factors described in the table at paragraph 106 below and the procedural requirements listed in paragraph 23 above. To provide surety and transparency, the exact nature of the natural disaster or similar adverse event could be linked to the Civil Defence Emergency Management Act 2002 and the definitions of natural emergencies described in that Act.

**Does Option A meet the policy objectives and (specific) assessment criteria identified above?**

64 This option meets objective one above, in that it helps achieve the policy objective of increasing consumer welfare and enhancing competition. However, Option A would do so only in relation to downstream industries. It does not cover the situations where a product is not used as a production input but is sold directly to consumers (e.g. canned peaches)

65 Because the consideration of the impact of duties would not extend any further than the impact on downstream industries, this option would continue to retain the effectiveness and objective of the anti-dumping and countervailing duties regime, but less so compared to the status quo. Likewise, this option would continue to provide regulatory certainty and impose relatively low administration and compliance costs (because the discretion to impose duties is limited to the impact of duties on downstream industries), but to a significantly lesser extent than the status quo.

66 This option would allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product.

## **Option B (Preferred Option):** Considers the impact of anti-dumping or countervailing duties on downstream industries, and consumers

### Option summary

67 As with option A, option B would allow the Minister to consider factors other than whether or not the goods are dumped or subsidised and causing injury to a domestic industry (the

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current test), when imposing an anti-dumping or countervailing duty. As with option A, this option would consider the impact of anti-dumping or countervailing duties on downstream industries that use the product as a production input. However, this option would also assess the impact of anti-dumping or countervailing duties on consumers.

68 This option would allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product.

**Does Option B meet the policy objectives and (specific) assessment criteria identified above?**

69 This option meets objective one above, in that it increases consumer welfare and enhances competition. This consideration would extend to downstream industries and consumers.

70 Because the consideration of the impact of duties would not extend any further than the impact on downstream industries and consumers, this option would retain to some extent the effectiveness and objective of the anti-dumping and countervailing duties regime. Likewise, this option would continue to provide regulatory certainty and impose relatively low administration and compliance costs (because the discretion to impose duties is limited to the impact of duties on downstream industries and consumers), but to a significantly lesser extent than the status quo and to a lesser extent than Option A.

71 This option would allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product.

**Option C:** Considers the impact of anti-dumping or countervailing duties on downstream industries, consumers and upstream industries (who supply production inputs to the domestic producers who the duties are designed to protect)

**Option summary**

72 As with options A and B, option C would allow the Minister to consider factors other than whether or not the goods are dumped or subsidised and causing injury to a domestic industry (the current test), when imposing an anti-dumping or countervailing duty. This option would consider the impact (cost) of anti-dumping or countervailing duties on downstream industries, and consumers.

73 However, this option would also assess the impact (benefit) of anti-dumping or countervailing duties on upstream industries. Upstream industries supply production inputs to the domestic producers (who the duties are designed to protect). The imposition of anti-dumping duties would benefit an upstream industry because, if the duties result in increased production and sales for the domestic producers (who the duties are designed to protect), this would likely lead to increased demand for raw materials from its upstream suppliers.

74 As with options A and B, there would also be provision for the responsible Minister to have discretion to not impose duties or to remove or suspend existing duties where a natural disaster such as an earthquake has significantly impacted on users of the product concerned.

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**Does Option C meet the policy objectives and (specific) assessment criteria identified above?**

75 This option meets objective one in that it would result in increased competition and enhanced consumer welfare. This consideration would extend to downstream industries and consumers. However, because this option would involve an assessment of the impact of the duties on upstream industries, this option would not meet this objective as much as options A and B.

76 Because the consideration of the impact of duties would be extended to downstream industries, consumers and upstream industries, the test would diminish somewhat the effectiveness and objective of the anti-dumping and countervailing duties regime. In the same manner, this option would provide significantly less regulatory certainty (because of the need to balance a higher number of competing interests) and higher administration and compliance costs (because of the greater number of factors to consider) than the status quo and less than Options A and B.

77 This option would also allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product.

## **Option D:** Considers a total welfare analysis when imposing anti-dumping or countervailing duties (an unbounded public interest test).

**Option summary**

78 This option would encompass a total welfare analysis when imposing anti-dumping or countervailing duties. It would be akin to conducting an unbounded public interest test.

79 A total welfare analysis/"unbounded" public interest test would analyse both the economic and non-monetary (e.g. environmental) impacts of imposing duties, including the impact of duties on related service industries such as transportation. It would also likely involve the quantification of the full costs and benefits of the imposition of duties in the economy.

80 As with options A, B and C, there would also be provision for the responsible Minister to have discretion to not impose duties or to remove or suspend existing duties where a natural disaster such as an earthquake has significantly impacted on users of the product concerned.

**Does Option D meet the policy objectives and (specific) assessment criteria identified above?**

81 This option clearly meets objective one above, in that it allows for consideration of the net benefit/cost of imposing duties (including the impact of duties on competition in New Zealand).

82 Because the consideration of the impact of duties would involve a full total welfare analysis, this option would significantly diminish the effectiveness and objective of the anti-dumping and countervailing duties regime. Given the nature of anti-dumping or countervailing duties (which is to provide a level of protection to domestic producers), this type of analysis would almost always conclude that duties impose a net loss on the economy. The practical implication of this option is that it would rarely, if ever, result in the imposition of anti-dumping duties, thereby compromising the effectiveness of the regime.

83 This option would lead to significantly less regulatory certainty (because of the need to balance a high number of competing interests when undertaking a total welfare analysis)

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and impose very high administration and compliance costs (because of the large number of factors to consider) than the status quo and all of the other options.

84 This option would also allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product.

## Option E: The introduction of an automatic termination period into the anti-dumping and countervailing duties regime as a stand-alone option

### Option summary

85 An automatic termination period (ATP) would require the termination of anti-dumping and countervailing duties, once imposed, after a specified maximum period (e.g. five years). An ATP would ensure that, when duties are imposed on imports, they do not become embedded in a manner which prevents industry from adjusting to underlying structural pressures and international competition from dumped or subsidised goods. Therefore, an ATP would encourage industry to use the period when duties are in place to adjust to underlying structural pressures and future import competition while recognising that protection against dumped and subsidised imports is required during the adjustment period.

86 There is a question of policy choice around the length of protection that domestic industry should be afforded. World Trade Organisation (WTO) rules provide that anti-dumping and countervailing duties may be continued beyond the maximum five year period but only if their expiry would likely lead to a continuation of injurious dumping or subsidisation which led to the imposition of the duties in the first place. In this situation the industry must apply for a continuation of the duties prior to their expiry.[2]

87 An ATP could be applied in its own or in conjunction with a bounded public interest test. Two broad options for an ATP are:

- An *absolute* ATP which would require the termination of anti-dumping duties after a specific period (e.g. five years) since the duties were imposed. There would be no ability for domestic industry to seek continuation of the duties prior to their expiry date or to seek the re-imposition of duties any time after the duties have expired even if dumping or subsidisation was continuing.

- An ATP which would allow for the re-imposition of duties once the duties have expired. This is a more flexible option. In order for duties to be reapplied (after their expiry) industry would need to submit a new application for the imposition of duties and provide fresh evidence of injurious dumping and/or subsidisation. This variation could also include an option of a 'stand down' period. A 'stand down' period would require that a certain amount of time elapse, since the duties were terminated, before industry can apply to have the duties re-imposed. A 'stand down' period would enable the effect of the non-imposition of duties on the domestic industry to be more fully tested before duties can be reinstated.

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[2] In many cases, New Zealand industries have applied and been successful in having duties continue for a further 5 years after their original imposition and in some cases, for additional 5-year periods after the initial 5-year period. Since 1 January 2010, 6 of the 11 anti-dumping duties set to expire were continued following a sunset review. Two duties were terminated following a sunset review while 3 duties expired because the industry did not apply for a review.

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88 As with the other options listed above, there would also be provision for the responsible Minister to have discretion to not impose duties or to remove or suspend existing duties where a natural disaster such as an earthquake has significantly impacted on users of the product concerned.

**Does Option E meet the policy objectives and (specific) assessment criteria identified above?**

89 This option partially meets objective one above, of increasing consumer welfare and enhancing competition, by encouraging industry to use the limited period when duties are in place to adjust to underlying structural pressures and future import competition. It would also meet this objective through the removal of a duty by means of its automatic termination. However, the test to impose anti-dumping or countervailing duties, in the first place, would remain, i.e. whether the goods are dumped or subsidised and are causing or threatening to cause material injury to the domestic industry. There would be no ability to take into account the wider impact of the duties, including competition and consumer welfare elements.

90 Because there would continue to be a period where duties are in place, this option would continue to retain the effectiveness and objective of the anti-dumping and countervailing duties regime. It meets this objective to a lesser extent than the status quo because duties would be limited in duration and industry would have no ability to apply for the re-imposition of the duties prior to their termination.

91 Likewise, this option would continue to provide regulatory certainty (because the discretion to impose duties is limited and the criteria are unambiguous) and would continue to impose relatively low administration and compliance costs (because the test is limited and clearly defined). Because an ATP would terminate a duty by statutory provision the administrative and compliance costs of terminating the duty would be low. If the ATP allowed an industry to apply for the re-imposition of a duty after its termination, these costs would likely be higher than an ATP which did not for this.

92 This option would also allow discretion to take into account significant adverse events, such as earthquakes or other natural disasters which have significantly impacted on users of the product.

## **Option F:** The introduction of an automatic termination period into the anti-dumping and countervailing duties regime in conjunction with a bounded public interest test

### Option summary

93 It is assumed that the BPIT which would apply under this option is that under Option B. Under this option, where the imposition of a duty was found to be in the public interest after applying the BPIT, under Option B the duty would nevertheless be automatically terminated after the specified termination period had elapsed.

94 The matters outlined above in paragraphs 85 to 88 about the way an ATP operates and the main variations that could apply to an ATP also apply to this option.

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**Does Option F meet the policy objectives and (specific) assessment criteria identified above?**

95 This option meets objective one above, in that it increases consumer welfare and enhances competition through the application of a BPIT. It also meets this objective by encouraging industry to use the limited period when duties are in place (assuming their imposition or renewal is not contrary to the public interest) to adjust to underlying structural pressures and future import competition, and by the eventual removal of a duty through its automatic termination.

96 Because there would continue to be a period where duties are in place (assuming that the imposition or renewal of a duty is not contrary to the public interest), this option would continue to retain the effectiveness and objective of the anti-dumping and countervailing duties regime to some extent. It meets this objective to a significantly lesser extent than the status quo because the imposition or renewal of a duty would be subject to a BPIT and, if found not to be contrary to the public interest, its imposition would be limited in duration and industry would have no ability to apply for the re-imposition of the duties prior to their termination. While this option meets the objective of retaining the effectiveness of the regime, it does so to a lesser extent than Options A, B, C and E.

97 This option would continue to provide regulatory certainty and impose relatively low administration and compliance costs (because the discretion to impose duties is limited to the impact of duties on downstream industries and consumers), but at lower levels compared to Option A. Because the ATP component of this option would terminate a duty by statutory provision the administrative and compliance costs of terminating the duty would be low. If the ATP component of this option allowed an industry to apply for the re-imposition of a duty after its termination, these costs would likely be higher than a stand-alone BPIT of the type under Option B because the undertaking of a new investigation is usually more resource intensive and complex than undertaking a review.

## Conclusion – Preferred Option

98 Table 1 below analyses, in summary form, the 6 options canvassed above, relative to the status quo. The table shows that 5 of the 6 options (options A, B, C, E and F) meet in varying degrees the stated policy objectives of (i) maintaining the effectiveness and underlying objective of the anti-dumping and countervailing duties regime; (ii) increased competition and enhanced consumer welfare and (iii) discretion to take account of natural disasters such as earthquakes.

99 Maintaining the status quo does not meet the policy objective of increased competition and enhanced consumer welfare while option D (total welfare analysis) does not meet the objective of maintaining the effectiveness of the anti-dumping and countervailing duties regime. They have therefore been discounted.

100 Of the remaining options, Option E is less preferable to options B, C and D. While an ATP would introduce an element of competition into the regime (by encouraging industry to use the limited period when duties are in place to adjust to future import competition), there would be no ability to take into account the wider impact of the duties, including competition and consumer welfare elements, when a decision is made to impose duties in the first place.

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101 Option F allows competition and consumer welfare elements to be taken into account in the decision about whether to impose anti-dumping or countervailing duties, through (i) the application of a BPIT; (ii) encouraging industry to use the limited period when duties are in place to adjust to import competition; and (iii) by the eventual removal of a duty through its automatic termination. However, while Option F meets the objective of retaining the effectiveness of the regime in providing relief from dumped or subsidised imports to some extent, it does so to a significantly lesser extent than the status quo and less than all of the other options except for Option D.

102 Option B is preferred over options A, C, E and F because it best meets the policy objective of increased competition and enhanced consumer welfare while also meeting the policy objective of retaining the effectiveness and underlying objective of the anti-dumping and countervailing duty regime, that is, to provide relief to domestic producers against dumped and subsidised injurious imports.

103 Option B is the preferred option overall because it best meets all the policy objectives (compared to the other options), including the combination of a public interest test and ATP (Option F).

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***Table 1: Analysis of the five options (including the status quo) against the policy objectives and assessment criteria***

| | Key policy objectives | | | Assessment criteria | |
|---|---|---|---|---|---|
| | **Results in increased competition and enhanced consumer welfare** | **Maintains effectiveness of anti-dumping and countervailing duties regime** | **Provides discretion to take account of natural disasters such as earthquakes** | **Low administration and compliance costs** | **Promotes regulatory certainty** |
| **Status Quo** | × No ability to consider competition and consumer welfare when imposing AD/CV duties. | ✓✓✓✓ Retains ability to seek effective relief from dumped or subsidised goods. | × No ability to consider natural disasters. | ✓✓ Low administration and compliance costs because test is limited and clear | ✓✓ Outcomes certain because discretion is limited and test is clear |
| **Option A: Considers impact of AD/CV duties on downstream industries** | ✓ Results in increased competition and enhanced consumer welfare. | ✓✓✓ Retains ability to provide relief from dumped or subsidised goods (more than options B and D but less so than status quo). | ✓ Provides discretion to consider natural disasters. | ✓× Higher administration costs than status quo since there are more factors to consider albeit these factors are limited. | ✓× Less certainty than the status quo since it requires balancing competing interests albeit these competing interests are limited to downstream users. |
| **Option B: Considers impact of AD/CV duties on downstream industries and consumers** | ✓✓ Results in increased competition and enhanced consumer welfare. | ✓✓Retains to some extent the ability to provide relief from dumped or subsidised goods (more than option D but less than options A and C and status quo). | ✓ Provides discretion to consider natural disasters. | ✓× Higher administration costs than status quo since there are more factors to consider, albeit these factors are limited. | ✓× Less certainty than the status quo since it requires balancing competing interests albeit these competing interests are limited to downstream users and consumers. |
| **Option C: Considers impact of AD/CV duties on downstream industries, consumers and upstream suppliers** | ✓ Results in increased competition and enhanced consumer welfare. | ✓✓✓ Retains ability to provide relief from dumped or subsidised goods (more than options B and D but less than status quo). | ✓ Provides discretion to consider natural disasters. | ×× Higher administration costs than status quo since there are more factors to consider. | ×× Less certainty than the status quo since it requires balancing competing interests of downstream users, consumers and upstream suppliers. |
| **Option D: A total welfare analysis** | ✓✓✓ Provides total welfare analysis (including impact on competition in the economy). | × Little ability to provide relief from dumped or subsidised goods (a total welfare analysis would unlikely lead to the imposition of duties). | ✓ Provides discretion to consider natural disasters. | ××× Very high administration and compliance costs (many factors to consider). | ××× Very little regulatory certainly (requires balancing competing interests of large number of parties and factors). |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Option E: An automatic termination period** | ✓ Limited duty imposition period will encourage industry to adjust to competition. | ✓✓ Retains ability to provide relief from dumped or subsidised goods during the limited duty imposition period but does not require the application of a BPIT. | ✓ Provides discretion to consider natural disasters | | ✓✓ Low administration and compliance costs because test is limited and clear. | ✓✓ Outcomes certain because discretion is limited and test is clear. |
| **Option F: A BPIT in conjunction with an ATP** | ✓✓✓ Results in increased competition and enhanced consumer welfare. | ✓ Retains to some extent the ability to provide relief from dumped or subsidised imports (significantly less than the status quo and less than options A, B, C & E). | ✓ Provides discretion to consider natural disasters. | | ✓✕ Higher administration costs than status quo since there are more factors to consider, albeit these factors are limited. | ✕✓ Less certainty than the status quo since it requires balancing competing interests of downstream albeit these competing interests are limited to downstream users and consumers. |

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## Applying the test (under option B)

104 The above analysis concluded that option B (a test which considers the impact of anti-dumping or countervailing duties on downstream industries, and consumers) was the preferred option. The test under option B is principally a public interest test "bounded" by allowing consideration of the impact of anti-dumping and countervailing duties on downstream industries, and consumers. The assessment would not extend to upstream suppliers nor would the test involve a total welfare analysis of the impact of duties.

105 In assessing the impact of the anti-dumping or countervailing duties in the above manner, the proposed test would encompass competition elements (i.e. to allow consideration of the impact of duties on competition in New Zealand) and proportionality elements (i.e. to allow consideration of whether the cost of the duties are disproportionate to the benefits). In particular, the test would assess the extent to which the duties would negatively impact on prices in New Zealand, product and service quality, effective choice for the product and any other factor essential to ensuring the existence of competition in the market.

106 In applying the test within the parameters above, factors such as the following would be considered:

| Factor | Explanation |
|---|---|
| 1. The effect of the anti-dumping and countervailing duties on prices of the product concerned. | There would be an assessment of:<br>• the extent to which the imported goods are currently entering the country and competing with the prices offered by the domestic industry.<br>• the extent to which the imposition of duties would increase prices of the imported goods including if the duties would likely be passed from importers to downstream industries and other users of the product, including consumers.<br>• the extent to which the imposition of duties would impact on prices and profit margins achieved by domestic producers. |
| 2. The effect of the duties on restricting the choice or availability of goods. | There would be an assessment of:<br>• the extent to which the duties would remove or significantly reduce the ability for importers and distributers to compete in the New Zealand market (this could include consideration of whether the domestic industry holds a market share above a certain percentage).<br>• the impact of the anti-dumping duties on competition among domestic producers of the product concerned and between domestic producers and exporters or importers of the product. |
| 3. The effect of the duties on product and service quality. | There would be an assessment of the extent to which the duties would negatively impact on product and service quality offered by the domestic producers and downstream users. |
| 4. The effect of the duties in helping to ensure the financial viability of the domestic industry. | There would be an assessment of:<br>• whether the non-imposition of duties could threaten the financial viability of the domestic industry.<br>• the extent to which the duties would |

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| | impact on production and production capacity levels of the domestic producers. |
| 5. The effect of the duties on employment levels. | There would be an assessment of the extent to which the imposition of duties would impact on employment levels, not just on the domestic producers but importers and downstream industries. |
| 6. Whether or not there is an alternative supply of the good available. | There would be an assessment of the extent to which there are readily accessible alternative import sources for the goods concerned, at comparable prices and quality. |
| 7. The extent to which the harm of imposing duties is likely to be excessive compared to the benefit. | There would be an assessment of:<br>• the cost of the imposition of duties on downstream industries and consumers.<br>• the relative benefits of the imposition of duties to the domestic producers of the product concerned.<br><br>The public interest test would preclude the imposition of duties where the harm of the duties to downstream industries and consumers materially[3] outweighs the benefit accrued to the domestic producers. |

107 The impact of the duties is likely to be felt over different time periods for each of the factors listed above and for each of the parties affected by the duties. For example, while the impact of the duties on prices might be evident almost immediately the impact on employment levels of local producers may be longer term. When assessing the above factors, the impact of the duties would likely be assessed over a time period sufficient to take into account any relevant longer term effects which may result from their imposition.

108 In order to ensure that the test implemented effectively, it would contain a number of procedural requirements. These procedural requirements are outlined in the 'Implementation' section of this RIS.

## Analysis of benefits and costs of preferred option (Option B)

109 The following analysis sets out, in greater detail, the likely benefits and costs, and quantification where possible, of those benefits and costs, of the preferred option (a "bounded" public interest test). This analysis is limited by the difficulty in predicting what percentage of cases, where such a test is conducted, would result in the non-imposition of anti-dumping or countervailing duties. Also, it is difficult to quantify the benefits and costs of introducing such a test.

110 In any event, quantified data has been used to the extent possible and the analysis includes estimates of the likely impact of removing anti-dumping duties currently imposed on imported building materials, in particular the anti-dumping duty applying to Thai imports of plasterboard. These anti-dumping duties were suspended through 2014 Budget Day legislation. The estimates of the impact of removing these duties were used by MBIE in the RIS relating to the suspension of those anti-dumping duties.

[3] "Materially outweigh" in this context means that the harm of duties to downstream industries and consumers must outweigh to a significant extent the benefit of the duties to domestic producers. It is not proposed that "materially outweigh" should be defined in legislation. The concept of materiality is already used without being defined in the Dumping and Countervailing Duties Act 1988 where there is a requirement that dumped or subsidised imports must cause "material injury" to a domestic industry.

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111 The analysis indicates that the benefits of introducing a bounded public interest test will outweigh the possible costs.

**Analysis of the benefits of the preferred option**

112 The adoption of a public interest test should bring about decreased prices of both imported and domestically-produced products. Conversely, the non-imposition of duties as a result of the application of a bounded public interest test would likely prevent an increase in prices and/or prevent the imposition of disproportionate costs on downstream users.

113 For example, the construction sector study, referred to above, estimated price reductions (in the absence of anti-dumping duties) in the cost of building an average 202m$^2$ house. Estimates of the cost reductions ranged from $680 – $4,400. The study estimated that the direct benefit of removing anti-dumping duties on plasterboard alone would be a reduction in the range $680 - $4,200. The latest import price data since the suspension of these duties indicates there has been a price reduction of 7 percent for plasterboard imported from Thailand, which would represent a cost reduction of building an exemplar house[4] of $949. Based on the number of consents for residential dwellings issued in 2013 of 21,300 this would represent a total cost saving of $20.2 million.

114 The impact of anti-dumping duties on reinforcing steel bar and coil was estimated to be up to $220 per house. However, import data since this duty was suspended shows that there were no imports of this product from Thailand suggesting that the suspension is unlikely to have had any effect on prices (the lack of imports since the suspension was the primary reason why the duty was subsequently terminated following a review). The suspension of the duties on wire nails is not expected to have any significant impact.

115 The indirect benefits from the removal or non-imposition of anti-dumping or countervailing duties can be just as significant as the direct benefits. Indirect benefits, through increased competition, include greater innovation and/or quality improvements and a more efficient allocation of resources.

**Analysis of the costs of the preferred option**

*The impact on domestic producers*

116 The introduction of a public interest test will adversely impact on New Zealand producers in cases where it is determined that the imposition of duties is not in the public interest. These producers would not be afforded protection from import competition through the imposition of anti-dumping or countervailing duties and may be unable to compete with cheaper imported goods, especially if the imported goods are undercutting the local industry's prices by a significant amount. Even a perceived weakening of the regime through the introduction of a public interest test could diminish support for further trade liberalisation (through the elimination of tariffs) by parts of the manufacturing sector (the principal users of such duties).

117 If a public interest test was adopted, it is conceivable that some domestic producers will suffer financial losses over time which could result in production facilities closing down with resulting job losses. This may also result in consequent adverse impacts on up-stream suppliers of inputs to the industry concerned and down-stream producers (who use the product as an input). For instance, downstream producers, and consumers, may be limited in their purchasing choice through no longer have the ability to source locally.

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[4] This is MBIE's estimate of the cost of building an exemplar house of 202 square metres.



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Having to source product entirely from abroad could result in product and service quality issues and surety of supply problems.

118 The counter-argument is that the demise of a domestic industry is simply a reflection of its un-competitiveness and that the resources allocated to uncompetitive industries are more efficiently utilised in industries in which New Zealand has a competitive advantage.

119 How a domestic producer copes with the non-imposition of duties will depend on a number of factors including the current level of competition for the goods, the product quality and service (including lead time) able to be offered by the importers (compared to the domestic producers) and the amount of brand loyalty New Zealand customers have to the domestic product. For instance, the domestic producers may adjust to the increased competition from the imports through streamlining their production processes, producing for niche market segments, or becoming more customer-focused.

120 In the example referred to above, of the plasterboard industry, the domestic manufacturer impacted as a result of the suspension of anti-dumping duties, is Winstone Wallboards Ltd (Winstone). Winstone is a wholly owned subsidiary of Fletcher Building Ltd. The company is the sole New Zealand plasterboard producer and currently holds approximately [redacted] percent of the New Zealand market. 9(2)(b)(ii) [redacted]

121 Any impact of the suspension of the duties, especially on sales and profitability for Winstone, will depend on how vigorously the company engages in the competitive process, whether the company is able to maintain sales volumes in the face of lower prices, and whether they are able to introduce more innovative solutions in a timely manner, etc. At the time the anti-dumping duty on plasterboard was last reviewed in 2011/12 Winstone provided several estimates of the likely impact of removing the duty. MBIE considered the most credible estimate was a price reduction 9(2)(b)(ii), 9(2)(g)(i) [redacted] percent (9(2)(b)(ii), 9(2)(g)(i) [redacted] seven percent reduction in import prices from Thailand since the duty was suspended). Winstone estimated such a price reduction would reduce both its sales revenue and its earnings before interest and tax by $[redacted]. **[s.9(2)(b)(ii) and 9(2)(g)(i) OIA]**

122 In any event the suspension of anti-dumping duties is unlikely to threaten the financial viability of Winstone. The company has a strong presence in the NZ market, its product (GIB) is strongly marketed and has an excellent reputation and its customers have historically shown a strong loyalty to the brand. 9(2)(b)(ii), 9(2)(g)(i) [redacted]

*The administrative costs of conducting a bounded public interest test*

123 Conducting a public interest enquiry would involve time and resources, not only for the government officials responsible for conducting the test but for the affected parties (e.g. domestic producers, importers and downstream industries) who would be expected to assist in conducting the test, by providing information and making submissions.

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124 The public interest test would use much of the information collected during the investigation but interested parties would likely consider it in their interests to provide further information and submissions to MBIE once a public interest test has been initiated. The cost of their time and resources is difficult to quantify but it would depend on how much information they would be expected to provide MBIE and the time they would need to collect this information.

125 It is envisaged that at least one government official would be required to conduct the public interest test. The cost to the government of conducting a dumping or countervailing duty investigation has been tentatively estimated at around $100,000 (based on public sector salary costs and other overhead expenses). On this basis, and taking into account the 90 day period needed to conduct a public interest test, a public interest test alone would likely cost the government around $50,000 in salaries and other expenses.

## Summary of Regulatory Impact

126 The table below provides a summary of the likely impact, and incidence, of the preferred option.

| Incidence of impact on: | Impact |
|---|---|
| **Government revenue (forgone) and costs of conducting a public interest test** | The impact on current government revenue will depend on the extent to which a public interest test results in the termination of the anti-dumping duties on imported goods which are currently subject to duties.<br><br>Currently there is anti-dumping duty imposed on a relatively small range of imported products originating from a small number of countries. The anti-dumping duty on 2 of these imported products (standard plasterboard from Thailand and wire nails from China) is currently suspended.<br><br>It is estimated the non-collection of anti-dumping duties (resulting from a public interest determination) will have a reasonably small impact on Crown revenue forgone, i.e. estimated at less than $200,000 each year, and may have no impact.<br><br>For example, many anti-dumping duties (including in the case of the plasterboard) a reference price duty is set (rather than a percentage-based *ad valorem* duty). The effect of this is that many exporters deliberately "price up" their exports to the reference price so that importers are able to (legitimately) avoid paying the duty. Under these circumstances no anti-dumping duty is collected by the Crown even if anti-dumping duties are in place.<br><br>A public interest test would likely cost the government around $50,000 (in salaries and other expenses) to conduct. |
| **Domestic manufacturers** | In the short run, the non-imposition of duties (resulting from a public interest determination), may lead to reduced sales and profitability and a drop in market share for domestic manufacturers (including those producers that currently have anti-dumping duties in place).<br><br>A worst-case scenario is that on-going losses in sales and profits, |

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|---|---|
| | with resulting staff losses, may result in a number of New Zealand producers going out of business entirely.<br><br>However, MBIE considers it more likely that domestic manufacturers will, in the long run, adjust to increased competition from dumped imports and that the non-imposition of duties is unlikely to threaten the financial viability of these businesses.<br><br>Notwithstanding this, the approval, in principle, of a public interest test (which could result in the non-imposition of anti-dumping duties in any given situation) has resulted in a negative reaction from these manufacturers. Domestic manufacturers who responded to the *Discussion Paper* and the *Supplementary Discussion Paper* (Consultation section refers) support a strong trade remedies mechanism to combat unfairly-priced imports and tended to oppose any weakening of the anti-dumping regime which they claimed would result from the introduction of public interest test. The imposition of a public interest test could also impact on the support of the manufacturing sector for further trade liberalisation. |
| **A sector or market for a particular good** | The direct benefit of the non-imposition of anti-dumping or countervailing duties (resulting from a public interest determination) would be the introduction of a more competitive element into those sectors and markets for the product in question.<br><br>Where an anti-dumping duty is already in place on a particular good, and the public interest test results in the removal of this duty, this should result in lower imported prices which, in turn, should drive down domestic prices.<br><br>Where there is no anti-dumping or countervailing duty in place on a particular good and an investigation determines that imports of a particular good are dumped or subsidised and causing injury to a domestic industry, the non-imposition of an anti-dumping or countervailing duty (resulting from a public interest determination) should also result in lower imported prices. The lower imported prices should, in turn, continue to supress domestic prices with the overall outcome being lower production costs (if the product is used as a manufacturing input) and lower prices for consumers and other end-users.<br><br>In terms of anti-dumping duty on imports of building materials, MBIE estimated that the direct benefit of suspending anti-dumping duties on plasterboard alone will eventually be a reduction in the cost of constructing an average house in the range $680 - $4,200 although the latest import price data since these duties were suspended indicates the cost reduction may be near the lower end of this range. Removing anti-dumping duties on imports of wire nails from China is much more difficult to quantify but is expected to have a much smaller direct impact. |

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## Consultation

### Agency Consultation

*Comments on the introduction of a bounded public interest test*

Treasury comment

127 Treasury noted its support for the introduction of a public interest test into the anti-dumping and countervailing duty regime on the basis that it would likely lead to fewer anti-dumping and countervailing duties being imposed.

MBIE's response

128 The introduction of a bounded public interest test may lead to fewer anti-dumping and countervailing duties being imposed. However, we are confident that the proposed test strikes a balance between maintaining a credible trade remedies regime which continues to provide an appropriate degree of assurance to domestic industries that they can be protected against dumped, subsidised and injurious imports, while also taking into account the wider public interest in determining if anti-dumping or countervailing duties should be imposed.

*Comments on a 'presumption in favour of imposing duties'*

Treasury comment

129 Treasury recommended that any a public interest test be based on a *neutral assessment* of the costs and benefits of anti-dumping and countervailing duties, rather than requiring the costs of the duties on consumers to "materially outweigh" the benefits to producers. In this manner there would be no "presumption in favour of imposing duties" (a feature of MBIE's proposed public interest test). According to Treasury, this would allow for a balanced assessment of national costs and benefits, and reduce the uncertainty over determining what is "material".

MBIE's response

130 MBIE has structured its proposed public interest test so that there is a presumption in favour of imposing anti-dumping or countervailing duties. This "presumption in favour of duties" is reflected in the test through the requirement that anti-dumping duties will be imposed (in cases of injurious dumping/subsidisation) unless it can be clearly shown that the harm of imposing duties to downstream industries and consumers materially outweighs the benefit of the duties to the domestic producers. This presumption in favour of duties is a feature of the public interest tests other countries have adopted. It was also signalled in an Options Paper released by MBIE as part of its construction sector study, and in its Discussion Paper, as a feature New Zealand would want in any public interest test it adopts.

131 If the test did not have a requirement that the cost to downstream industries and consumers must materially outweigh the benefits to the domestic industry, but rather involved a simple comparison of costs and benefits without any weighting in favour of the domestic industry, it is unlikely that the test would ever find the imposition of duties is justified. This would likely mean there would not be an effective anti-dumping and countervailing duties regime available to domestic producers. Maintaining an effective trade remedies regime is one of the three key policy objectives identified in this RIS.

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*Comments on an automatic termination period for the anti-dumping regime*

Treasury Comment

132 Treasury supports the inclusion of an ATP for the regime to manage the risk that duties become embedded as a long term form of trade protectionism. For example duties on imported peaches have been in place since 1998, have only become more extensive since and will continue until at least 2020. In this case there are four countries (each with a number of suppliers) attempting to enter the market which suggests there is a high degree of competition.

MBIE's Response

133 A bounded public interest test, on its own, will increase competition and enhance consumer welfare while retaining the effectiveness of the anti-dumping and countervailing duties regime. The combination of both a public interest test and ATP poses too high a risk that the anti-dumping regime will not provide the necessary level of protection to domestic industry when faced with dumped or subsidised imports.

*Comments on the need to maintain a trade remedies regime*

Treasury comment

134 Treasury submitted that consideration should be given to whether the anti-dumping and countervailing regime should be removed altogether given that the public interest test will substantially increase costs and complexity of the regime, resulting in fewer duties being imposed.

MFAT comment

135 The Ministry of Foreign Affairs and Trade noted the importance of a trade remedies regime in providing domestic industry with a means to address dumping and subsidisation of imported products.

136 MFAT was concerned that a public interest test would limit the ability of industry to make use of anti-dumping and countervailing duties in certain circumstances. However, MFAT acknowledged that the practical effect of introducing a public interest test was likely to be limited given the small number of producers that currently make use of New Zealand's anti-dumping regime and the high threshold that would be required to overturn MBIE's proposed presumption in favour of imposing a duty when there is a finding of injurious dumping or subsidisation.

MBIE's response

137 The complete removal of the anti-dumping and countervailing regime was not considered by MBIE as it was outside the scope of the direction given by Ministers to officials. Specifically, Cabinet directed officials to develop a bounded public interest test for the anti-dumping and countervailing duties regime, with a view to considering amendments to the Act once the public interest test has been developed. Cabinet clearly did not envisage the complete removal of the regime.

138 In any event, MBIE doubts that a public interest test will substantially increase the costs and complexity of the regime to the extent that it will become ineffective. Instead, the Ministry considers that it has developed a test which is workable, appropriately balanced and cost-effective for officials administering it and for users who will benefit from it. MBIE considers that the test it is proposing would continue to provide domestic industries from relief against dumped, subsidised and injurious imports, while also taking into account the public interest considerations in determining if anti-dumping or countervailing duties are warranted.

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139 The additional complexity that a public interest assessment will add to the investigative process will increase the risk of *legal challenge.* However, given the small number of dumping and subsidy investigations conducted by MBIE and the fact that there are already systems in place to mitigate the risk of legal challenges in such investigations, we consider the risk of legal challenge to be low.

*Comments on the need for a trade remedies regime to ensure support for trade liberalisation*

MFAT's Comments

140 MFAT noted that a trade remedies regime also plays an important role in building support for wider trade liberalisation.

Treasury comment

141 Treasury submitted that, given New Zealand's low levels of import protection, the argument that an effective anti-dumping duty regime is necessary to ensure support from industry for trade liberalisation, is not strong.

MBIE's response

142 New Zealand continues to maintain tariff protection on certain imported products, including those which are currently subject to anti-dumping duty. While most import tariffs have decreased over time, and are not high compared to some of our trading partners, these tariffs are still regarded by domestic producers as important in providing a competitive edge over imports.

143 As tariffs are reduced and eventually eliminated under New Zealand's free trade agreements (FTAs), access by domestic producers to trade remedies (including anti-dumping and countervailing duties) provides an important safety net for these producers. While trade remedies are used reasonably infrequently by New Zealand industries, a key message received from New Zealand producers when negotiating FTAs is that New Zealand must maintain a robust and effective trade remedies regime. The knowledge that such protection exists bolsters support from these domestic producers for further trade liberalisation, including under new FTAs.

## Public Consultation

144 In June 2014, MBIE released a *Discussion Paper* that consulted on options to introduce a bounded public interest test into the anti-dumping and countervailing duties regime. Three possible options were suggested. These were (i) to maintain the status quo; (ii) to provide *qualitative criteria* in the Act on public interest matters that must be taken into account in deciding whether or not to impose a duty; and (iii) to introduce *numerical thresholds* into the Act that must be met before a duty can be imposed.

145 In June 2015, MBIE released a *Supplementary Discussion Paper* on options for introducing an ATP to operate in conjunction with a BPIT. Two main options for an ATP were identified: (i) an ATP with no ability for a domestic industry to apply for the re-imposition of a duty after its termination; and (ii) an ATP with the ability for a domestic industry to apply for the re-imposition of a duty after its imposition.

### Submissions received on June 2014 discussion paper

146 Twenty submissions were received on the Discussion Paper. Thirteen submitters expressed support for the status quo while seven submitters supported the adoption of a public interest test.

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***Support for maintaining the status quo***

147 There were a variety of reasons submitted in support of maintaining the status quo. These reasons can be generally categorised as follows:

*(a) New Zealand's anti-dumping regime is WTO-compliant*

148 Submitters noted that the practice of imposing anti-dumping duties is legitimately sanctioned under WTO rules and that the imposition of anti-dumping duties is simply levelling the playing field to enable New Zealand producers to compete with the dumped imports.

*(b) A problem with New Zealand's current anti-dumping regime has not been sufficiently identified*

149 Submitters pointed to the fact that there are only a very small number of imported products subject to anti-dumping duties which suggests that New Zealand is not using the anti-dumping regime as a tool to arbitrarily protect its domestic producers from competitive imports. The low number of cases where anti-dumping duties have been imposed also indicates that the mechanism is costly, time-consuming and overly complex and, as such, the domain of large companies. Therefore, why make such a system even more complex, less certain, and less attainable for New Zealand firms, by introducing a bounded public interest test. The uncertainly introduced by a public interest test would reduce substantially any positive outcomes for New Zealand manufacturers and would remove the notion of fairness in trade which underpins free trade.

*(c) The introduction of a public interest test would weaken New Zealand's anti-dumping mechanism*

150 Submitters noted that a weakening of the anti-dumping mechanism would enable off-shore predatory traders to access the New Zealand market with the likely outcome being a significant reduction in New Zealand manufacturing capacity with markedly adverse employment and social implications. A robust and sustainable manufacturing base is vital for sustaining investment, competition, employment and growth. These submitters doubted that even natural disasters, such as the Christchurch earthquake, justified the weakening of the anti-dumping mechanism. Natural disasters, for example, could be catered for by the ability of local and central government to declare a state of emergency which would allow agencies to override usual rules and practices.

*(d) Competition effects are a matter for our competition laws and competition authorities to address, and not a matter for our anti-dumping laws and authorities to address*

151 Submitters noted that countervailing and anti-dumping duties should not be used as a substitute for good competition law. While it may be advantageous to competing importers and consumers to have access to lower-cost dumped or subsidised products, the inevitable impact is further de-industrialisation regardless of the frequency of such imports. Local producers will find it very difficult to survive in the face of such uncertainty.

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***Support for the adoption of a public interest test***[5]

152 There were a variety of reasons submitted in support of adopting a public interest test, which can be generally categorised as follows:

*(a) A general disposition toward free trade including a belief that anti-dumping duties create an unfavourable market distortion*

153 One submitter noted that anti-dumping has become the last focus point for protectionists in New Zealand and, apart from protectionists, the only people left arguing for the retention of anti-dumping laws are those who stand to gain directly from their existence, namely the coterie of consultants employed by complainant companies and victims alike.

154 Other submitters considered New Zealand's anti-dumping regime is vulnerable to abuse by anti-competitive domestic industries attempting to safeguard monopolistic profits.

*(b) The current test for imposing anti-dumping duties is too narrow and too rigid*

155 Some submitters noted that taking into account the broader public interest should result in better overall outcomes from the anti-dumping regime and lead to less instances where the cost of imposing an anti-dumping duty is substantially greater than the benefit, for instance, where the New Zealand public is disadvantaged by the imposition of duties which might benefit a single domestic company. According to these submitters, anti-dumping duties should only apply where there is a real and substantial benefit, as might be measured by a public interest test.

*(c) A public interest test has been included in New Zealand's Trade (Safeguard) Measures Act*

156 Some submitters noted that, as a matter of consistency between New Zealand's safeguard mechanism and its anti-dumping/countervailing duties mechanism, some form of public interest test should be introduced into our anti-dumping and countervailing regime.

***Qualitative criteria to be considered in a public interest test***

157 Of the seven submitters who supported the adoption of a public interest test, all seven supported the provision of *qualitative criteria* on public interest matters that must be taken into account in deciding whether or not to impose a duty (rather than bright-line numerical thresholds). Generally there was agreement that the Ministry had identified relevant criteria.

***Process and procedural matters***

158 There was also a range of submissions on various process and procedural issues. Most submitters favoured the implementation of the following key processes and procedures:

- The test should be carried out by MBIE.
- The test should apply to both new investigations and reviews of an existing duty.
- There should be a set timeframe for completing the test.
- Interim duties should be imposed while the test is carried out.

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[5] Of the seven submitters who supported the adoption of a public interest test, the majority (five) considered that an *unbounded* (as opposed to an bounded test) should be adopted.



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- The Minister should make the decision about whether duties should be imposed after the test has been carried out.

**Submissions received on June 2015 supplementary discussion paper**

159 Thirty one submissions were received on the Supplementary Discussion Paper. Six submitters expressed support for an ATP while 25 submitters opposed an ATP.

***Support for an ATP***

160 Of the 6 submitters who supported the adoption of an ATP, 3 indicated their support for an ATP which does not allow a domestic industry to apply for the re-imposition of a duty after its termination. The other 3 submitters supported an ATP which allows a domestic industry to apply for the re-imposition of a duty after its termination. Two out of the 3 submitters who supported allowing a domestic to apply for the re-imposition of a duty also supported a stand down period, i.e. a period that must elapse after the termination of a duty before a domestic industry can apply for its re-imposition. These 2 submitters supported a stand down period of 5 years and 3 years.

161 Of the 6 submitters who supported an ATP, 4 supported a maximum imposition period of 5 years, 1 supported a maximum imposition period of 3 years and 1 submitter did not express an opinion on a maximum imposition period.

162 There were a variety of reasons submitted in support of an ATP. These reasons can be generally categorised as follows:

- An ATP would provide domestic industry with a time line by which they must become more efficient, innovative and competitive.
- An ATP would prevent the anti-dumping and countervailing duties regime from being open to abuse by anti-competitive domestic industries.
- WTO rules contemplate anti-dumping and countervailing duties being imposed for a limited time only.

***Opposition to an ATP***

163 Most of the submitters opposed to an ATP were domestic manufacturers, industry associations, unions and upstream suppliers to domestic manufacturers.

164 There were a variety of reasons submitters opposed an ATP, which can be generally categorised as follows:

- A compelling case for an ATP has not been made as there is no real evidence to suggest consumer welfare benefits would ensue from the adoption of an ATP.
- Anti-dumping and countervailing duties are imposed to remedy injurious dumping and/or subsidisation to an industry. An ATP would remove this recourse to industry in cases where duties are warranted.
- The adoption of an ATP is contrary to Australia's anti-dumping practice at a time when official policy is to seek harmonisation in the commercial and financial laws between the two countries.
- No other country has adopted an ATP. New Zealand is entering "unchartered waters".

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- Competition effects are a matter for our competition laws and competition authorities to address, and not a matter for our anti-dumping laws and authorities to address.

## Implementation

165 If Cabinet confirms in August this year its in principle decision of June 2015 to introduce a BPIT and accepts MBIE's recommendation that an ATP not be introduced there should be no need to make any changes to the BPIT agreed to in principle. The process of codifying the public interest test into New Zealand's legislation is expected to take a minimum of a further 18 months from that date. This will include drafting legislation and the subsequent legislative process for amending the Dumping and Countervailing Duties Act. Once passed, the legislative amendment will be notified to the WTO and will be scrutinised in the relevant WTO committees.

166 A BPIT will apply to all future instances where (i) a dumping or subsidy investigation has found that goods are being imported into New Zealand at dumped or subsidised prices, and (ii) where a review of an existing duty has determined that there is likely to be a continuation or recurrence of dumping/subsidisation and material injury if the duty is removed. It is also envisaged that the test will be developed and incorporated into New Zealand's anti-dumping and countervailing duties legislation so that it can be applied to the 2 anti-dumping duties in place (but currently suspended) on imports of building materials when the suspension of these duties lapses on 31 May 2017. Prior to the end of the 3-year suspension period of the anti-dumping duties on residential building materials, it is intended that the duties will be reviewed under amended legislation which provides for the application of a public interest test. This will allow MBIE to conduct a public interest assessment of these duties to determine if their re-imposition following the end of the suspension period will be in the wider public interest.

167 In order to implement the public interest test, the key *procedural requirements* approved in principle by Cabinet, as set out in items c. to f. in paragraph 23 above, will be incorporated into a bounded public interest assessment.

## Monitoring, Evaluation and Review

168 As noted above, the bounded public interest test will be developed with the expectation it will be incorporated into the Dumping and Countervailing Duties Act before the suspension of the anti-dumping duties on residential building materials lapses. Once introduced, and before the duties are re-imposed, it is intended that MBIE will conduct a public interest assessment of the duties to determine if their re-imposition is in the wider public interest.

169 Conducting a public interest test on the suspended duties will provide MBIE with the opportunity to evaluate the workability of the test to ensure it has performed against the key objectives identified in this RIS. A feedback mechanism could be set up to seek views from interested parties on the workability and effectiveness of the test.

170 The monitoring, evaluation and review of the public interest test could be performed in two stages.

*Stage 1: Conducting the test (monitoring)*

171 The monitoring of the test would take place while the public interest assessment is being conducted. This would involve an assessment of how well the qualitative criteria (for the test) are able to be analysed and how well the procedural requirements are able to be met.

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*Stage 2: Post-public interest assessment (evaluation and review)*

172 The evaluation and review of the test would take place after the public interest assessment has been conducted and the assessment has resulted in either the imposition or non-imposition of anti-dumping or countervailing duties.

173 In respect of the duties already in place on certain imports, the evaluation and review of the test could involve an analysis of the extent to which downstream industries decrease their prices and increase their market share if the test results in the removal of duties.

174 In respect of a product to which a duty is not applied, the evaluation and review of the test could involve an analysis of the extent to which domestic producers (who would, in the absence of a test, have been be afforded protection from dumped or subsidised imports through the imposition of duties) continue to compete against the dumped or subsidised imports.

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