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## Metals New Zealand submission to Proposed Amendments to the Trade Remedies Legislation

email to: [traderem@mbie.govt.nz](mailto:traderem@mbie.govt.nz)

### Feedback on draft Proposed Amendments to the Trade Remedies Legislation

#### 1. Introduction.

Metals New Zealand has prepared this submission having consulted with its member organisations (listed at the end of this submission) .

Over 29,000 New Zealanders are employed in metal manufacturing businesses<sup>1</sup>. The majority of these are small to medium sized businesses, principally located in our regions.

Our members are concerned about the increasing quantities of imported metal products. Commonly the price of these imported products is close to the cost of the raw material inputs – a cost which is the same globally!

Uncertainty around timelines to process anti-dumping / subsidisation cases is of real concern to local manufacturers.

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<sup>1</sup> NZ Sector report Series- Beyond Commodities: Manufacturing into the Future. MBIE 2018.  
<https://www.mbie.govt.nz/assets/f0f81b6194/new-zealand-manufacturing-sector-report-2018.pdf>

## 2. Comment

- 2.1. Metals New Zealand submits that in order for the proposal to extend the timeframes in a Trade Remedies Investigation to be comprehensively considered, then the overall practice of officials in receiving and considering applications from industry should also be taken into account.
- 2.2. The questions regarding this are not addressed in the Discussion Paper, however we will comment on some very necessary changes we believe need to take place **prior to** the initiation of a formal investigation.

## 3. Timeframes in a Trade Remedies Investigation

- 3.1. Timeframes relevant to the conduct of a Trade Remedies Investigation should be considered in three separate phases:
  - (a) Acceptance and initiation of an application.
  - (b) Undertaking the formal investigation.
  - (c) Ministerial imposition of duty and notice of final decision.
- 3.2. No statutory timeframes are imposed on officials to accept and subsequently initiate an investigation. Guidelines are provided, but in practice these are meaningless. Recent investigations have averaged approximately five months from the date of receipt of the application to the date of initiation.
- 3.3. Statutory timeframes for the investigation phase are set out in the legislation. Historically officials (MOC, MED and now MBIE) adhered to these timeframes, but have failed to do so in more recent investigations. Although the extensions have not been fatal to the validity of the investigation or the outcome, they have undermined the confidence of the manufacturing sector in the process.
- 3.4. As shown in the attached timeline, there are periods within a trade remedies investigation that has no statutory time limit. In particular, we are concerned that there is a potential extension of time as a trade remedies investigation moves from Step 1 to Step 2. Although the word “immediate” is used in the legislation, this places no binding period by which Step 2 must be commenced.

**TIMELINE FOR A TRADE REMEDIES INVESTIGATION**

Milestone	Activity	Statutory Reference	No. of Calendar Days		Cumulative Days	
			Prescribed	Not Prescribed	MBIE	Actual
Application lodged			0	0	0	
Acceptance	Consideration by MBIE that the application is properly documented.	S10(1)	5 <sup>2</sup>	10 <sup>3</sup>	5	
Initiation	Consideration by MBIE that there is sufficient evidence to justify investigating.	S10A	30 <sup>1,3</sup> (20 working days)	50 <sup>3</sup>	<b>35</b>	<b>60</b>
Investigation: Step 1	Final report.	S10D	180		215	240
	Proposed Extension		90		305	330
	Determination of rate by the Minister	S10D(2)	N/A	10 <sup>3</sup>		340
Investigation: Period between Step 1 and Step 2	Minister directs Chief Executive to <b>immediately</b> start investigation Step 2	S10D(2)(b)	N/A	5 <sup>3</sup>		345
Investigation: Step 2	Chief Executive commences investigation	10F(1)	N/A	30 <sup>3</sup>		375
	Final Report	S10H(1)	90		395	465
	Minister gives notice of determination	S10H(2)	N/A	2 <sup>3</sup>		
Imposition of Duty	Minister imposes a duty	S13(1)	N/A	2 <sup>3</sup>		
	Minister gives notice of imposition of duty	S13(2)	N/A	1 <sup>3</sup>		
<b>TOTAL DAYS</b>			<b>395</b>		<b>395</b>	<b>470</b>

<sup>2</sup> Indicative not prescribed times provided by MBIE

<sup>3</sup> In the case of subsidy investigations, where there is an obligation to consult with foreign governments, this time will be extended significantly

<sup>3</sup> No statutory timeframe, and this is a best case estimate

<sup>4</sup> The above statutory timeframes will be extended if they incorporate the Christmas period

<sup>5</sup> In the case of a Review, there is no time specified for a Reassessment

#### 4. To what extent do you consider MBIE has proposed an appropriate response to identify the problem?

- 4.1. Because MBIE has not looked at the totality of a trade remedies case vis from lodging the application through to the final decision, its proposed response provides only a partial solution.
- 4.2. With the recent inclusion of a Public Interest Test in the legislation, there is now a minimum statutory timeframe of 270 days for officials to conduct an investigation. This in fact will be considerably more because there is no time limit for the period between Steps 1 and 2 of the investigation. Because the Ministry has yet to conduct a Public Interest Test investigation, we are speculating on what the gap may be between Steps 1 and 2. Twenty working days may not seem to be unreasonable, (however the timeline needs to be defined.) If so, this would then extend the timeframe even further than that defined in the discussion paper.
- 4.3. Even this is an unacceptable timeframe for the manufacturing sector, which will be exacerbated by the addition of a further 90 days as proposed.

#### 5. What other criteria if any do you consider should be applied?

- 4.4. Consideration should be given to imposing a statutory timeframe for the **initiation** of an application. We accept that it is not fair to impose on officials a statutory timeframe relating to the **acceptance** of an application, as this is driven by the quality of the document submitted by the Applicant. However, the pre-initiation phase should have a statutory timeframe which would provide a greater discipline on officials and give more certainty to the manufacturing sector.
- 4.5. In our view, current practice seems to be that a de-facto investigation is carried out prior to Initiation, probably to enable the formal investigation to meet the statutory timeframe. It is clear that even this is not currently working. Nevertheless, we accept that the ability of officials to carry out certain of the preliminary investigative tasks (for example, prepping questionnaires, finding / confirming details of foreign manufacturers) prior to Initiation is helpful, and gives the manufacturing sector more certainty that the statutory timeframes which follow, will be complied with.
- 4.6. It is unreasonable to expect trade officials to be industry experts prior to the commencement of an investigation. We submit that the recruitment of **independent** industry experts or analysts would assist MBIE in its understanding of the key issues pertinent to the industry being investigated, and thereby help comply with legislative timeframes.

4.7. It is our observation that a reasonable percentage of the time spent during an investigation is taken up with administrative processes, rather than looking at the merits of the claim. We accept that due process is necessary in order to resist potential legal challenges, but a better balance needs to be struck between time spent on this, and time spent on analysing and reaching decisions on key evidential matter. This should be readily addressed by the committing of further resources to the investigating team.

5. **What advantages or disadvantages could result from amending the Act, including any unanticipated consequences?**

5.1. If the Act is amended only as proposed in the Discussion Paper, there will be disadvantages for the manufacturing sector, from where applications are drawn. The extension of the time taken to achieve a result (outlined above) can often be the difference between a business surviving or not, particularly in the case of SMEs.

5.2. Should some of the other amendments we have suggested also be incorporated into the legislation, then we submit a better balance will be brought to the investigative process and will give manufacturers greater confidence that their concerns will be addressed in a reasonable (although not ideal) commercial timeframe.

5.3. The consequences of an extended timeframe for investigation will be to further discourage industry from using this legitimate and globally recognised trade process. This may be a useful outcome for officials in terms of their workload, but it does provide further disincentive to investment in the manufacturing sector in New Zealand.

5.4. Further, without a robust trade remedies regime which is used by the commercial sector, New Zealand's ability to participate in WTO trade remedies related developments may be compromised. Theoretical postulation is not as effective as observations drawn from the practical experience of conducting investigations.

## What other comments on the matter of providing powers to extend timeframes do you have?

- 5.5. This Discussion Paper appears to be a knee jerk reaction to recent difficulties experienced by officials in complying with the current statutory timeframes. As outlined above, it does not balance other aspects of the trade remedies **process** which should be taken into account. The Ministry's current practice of extending timeframes has been found to be lawful as per Dobson J's decision in *Heinz Watties*, subject to an adequate definition of "extenuating circumstances".
- 5.6. The attempt in the Discussion Paper to define "extenuating circumstances" does not really achieve its purpose. Despite there being some clarity around points (a)-(d), the wash up heading in paragraph (e) simply means that the Ministry can continue to extend timeframes as it wishes. This provides a complete lack of certainty to the commercial sector and therefore reduces confidence in the system.
- 5.7. We also respectfully submit that this consideration to extend timeframes is **premature** given that there is no precedent relating to how officials will handle a Step 2 investigation. It would seem that if the entire trade remedies investigation process is to be adequately reviewed, there should be some history of a Public Interest Test investigation (Step 2) to determine whether in fact the timeframes assigned to that part of the process are also adequate.

## Conclusion

6. We would expect that any changes to the Proposed Amendments to the Trade Remedies Legislation would be taken to a select committee process.

Please acknowledge receipt:

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## Metals member organisations



[www.hera.org.nz](http://www.hera.org.nz)

The New Zealand Heavy Engineering Research Association (HERA) was established in 1979 as a non-profit research organisation dedicated to serving the needs of the metals-based industries in New Zealand. Its membership consists of approximately 600 companies representing metals-based fabrication and manufacturing companies, the associated design and consulting industry, related education providers, and the supporting material supply and services industry. HERA is base funded through an industry generated R&D contribution in the form of a levy on heavy steel and welding consumables administered by the Heavy Engineering Research Levy (HERL) Act. HERA's current research is in the areas of steel construction, general heavy engineering industry development and welding fabrication innovation. HERA works with other research providers such as universities, independent research organisations and CRIs to deliver its programmes.



[www.scnz.org](http://www.scnz.org)

Steel Construction New Zealand Inc. (SCNZ) aims to advance the interests of New Zealand's diverse steel construction industry by promoting the benefits of steel solutions in building and infrastructure projects. Members include manufacturers of structural steel and steel products, distributors, fabricators, designers, detailers, galvanisers, and paint and building supply companies. SCNZ provides its members with technical advice on the latest in steel design trends and standards, networking opportunities, and a representative voice with key industry and Government decision-makers.



[www.galvanizing.org.nz](http://www.galvanizing.org.nz)

The Galvanizing Association of New Zealand (GANZ) represents the core of New Zealand's galvanising specialists. Its mission is to promote the environmental sustainability of its product and to maintain the highest standards of quality and service in support of New Zealand construction and engineering industries through its international affiliations.



[www.castingtechnologynz.org](http://www.castingtechnologynz.org)

Casting Technology New Zealand (CTNZ) aims to be a major contributor to the success and prosperity of the metal casting industry. The organisation is an advocate for maintaining high industry standards and encourages members to participate in quality training programmes. It provides a network for technical and business activities among its membership at national and international levels. At a Government level, CTNZ keeps abreast of legislation relevant to the metal casting industry and, importantly, represents the industry's position on issues affecting the sector.



[www.metalroofing.org.nz](http://www.metalroofing.org.nz)

The New Zealand Metal Roofing Manufacturers Association Inc. (NZMRM) represents companies that roll-form steel and other metals for roofing and cladding purposes. Commonly known as 'Rollformers', NZMRM has 30 member companies. Members are involved in producing a wide range of profiled product, both painted and unpainted. The Association is active in the development and promotion of industry standards, and in conducting research that promotes the use of metal roofing and cladding.



[www.nashnz.org.nz](http://www.nashnz.org.nz)

Formed in New Zealand and Australia in 1982, the National Association of Steel-Framed Housing (NASH) is an advocate for all forms of low and medium rise steel-framed construction. NASH represents the interests of suppliers, practitioners and customers of steel-framing systems, and provides a representative voice for the sector at Government level.



[www.nzssda.org.nz](http://www.nzssda.org.nz)

The New Zealand Stainless Steel Development Association (NZSSDA) was formed in 1998 to promote and develop the stainless steel market in New Zealand. Its members include engineers, architects, fabricators, merchants and end-users with an interest in the supply or application of stainless steels. NZSSDA supports and encourages technical excellence in the industry and provides specialised training courses on stainless steel for the New Zealand market.

## ALUMINIUM EXTRUDERS NZ

New Zealand's major aluminium extrusion companies work collaboratively, (supported by Metals NZ), on areas of common interest which include fair and free trade, non-conforming products, government procurement and sustainability.



The Sustainable Steel Council (SSC) was reconstituted by Metals NZ, HERA, SCNZ, NZMRM, NZSSDA, NASH, New Zealand Steel, Fletcher Steel and Steel and Tube in 2018. Members of the Sustainable Steel Council are committed to a vision where steel is valued as a critical enabler in New Zealand's journey to a low emission economy. The vision is achieved by a financially sound industry taking leadership in delivering to the living standards framework, measured across human, social, natural and financial / infrastructure capitals.