



Submission by Heinz Wattie's Limited

To: Labour, Science and Enterprise Group
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In response to: **Trade (Anti-dumping and Countervailing Duties) Act 1988:
Applying the Public Interest Test – Consultation Note (August 2019)**

13 September 2019

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Heinz Wattie's Limited

- 1 Heinz Wattie's Limited (**HWL**) is a significant primary processor of fruit and vegetables in New Zealand, producing a diverse range of foods including frozen and canned fruit and vegetables, soups, meals and sauces. As a household name in New Zealand, Wattie's has been feeding New Zealand families since 1934.
- 2 HWL's business operations include the growing and processing of peaches, and HWL is the sole domestic producer of preserved peaches in New Zealand. HWL has made applications to MBIE in the past to impose anti-dumping duties to prevent the dumping of canned peaches into New Zealand from countries including Spain, South Africa, Greece and China.
- 3 As such, HWL welcomes the opportunity to comment on MBIE's **Consultation Note** on the "Public Interest Test" under the *Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act)*.
- 4 HWL also requests disclosure of certain information under the *Official Information Act 1982*, as described below.

Comments on Part 1: Considerations under 10(F)(3)(a)-(h) of the Act

- 5 HWL notes that the analysis of price effects should consider the effect of a measure on reducing the amount of price undercutting. That is, the duty aims to restore the identified price to what it should have been in the absence of the dumping or subsidisation. This means that the price of the dumped or subsidised import could still be less than the like goods produced in New Zealand or other imported goods.

Comments on Part 2: PIPES Model

- 6 In MBIE's report to the Commerce Committee (22 September 2016), the Committee was informed that the then Bill would follow the following interpretation:

*Factors/criteria are specified in legislation but **no quantitative weighting** given to the factors.*

A conclusion will be reached based on the totality of information collected.

- 7 The Commerce Select Committee in its report (13 December 2016) concluded:

Methodology and defensibility of the public interest test

*Part 4 of the bill as introduced contains the criteria that the chief executive must investigate in the public interest test. The assessment of whether imposing an anti-dumping or countervailing duty is in the public interest consists of eight factors. The public interest test in the bill is **subjective in nature**. We were advised*



that MBIE would make assessments and recommendations on non-numerical values across multiple (and sometimes competing) factors.

The committee examined at length how the public interest test would work in practice.

- 8 It is surprising that a quantitative test is now being contemplated by officials when, on the available evidence, this was not presented to Parliament.
- 9 The Consultation Note explains that the PIPES test example provided in the Consultation Note (which is clearly not contemplated in the Act) will be applied as follows:

*If the sum of the monetary impact on downstream industries and consumers materially outweighs the benefit to the domestic industry, this is a **partial indicator** that imposing duties will not be in the public interest (equation (19)). This will then be weighed against the other mandatory considerations in section 10F(3) for the final determination under the Act.*

- 10 There is no mention in the Act or the Commerce Committee's report that envisages a partial quantitative test.
- 11 The Consultation Note also notes that: "The data requirements in these cases are substantial and not practicable for **the test required in the Act**" (see extract below); but the use of a quantitative tool seems to be outside of Parliament's intentions, and is not "a test required in the Act". Therefore, it would seem that MBIE is not acting within the intention of the legislation regarding a quantitative element.

PIPES Model – Observations

- 12 The Consultation Note comments on the essential issues with the economic models:
- Although these models have good theoretical foundations, they are very difficult to apply in practice. Data availability limits the level of sophistication possible when applying economic models to real life scenarios. The data requirements in these cases are substantial and not practicable for the test required in the Act. Because of this, MBIE has developed the PIPES model to assist in the considerations set out in the Act. The framework of the PIPES model is set out below.*
- 13 There is no explanation of how the PIPES model "developed" by MBIE has overcome the problems with data. Presumably the data issue is overcome with a basic supply and demand analysis.
- 14 HWL's preserved peach business will be the first industry to encounter a Public Interest Test (**PIT**), in the context of its South Africa anti-dumping duties sunset review.



- 15 HWL would make the following comments in relation to the application of a PIT (as proposed in the Consultation Note):
- (a) There is a very short time for HWL to comment on the draft PIT. This is particularly so given the assumptions used in the PIPES model.
 - (b) HWL would question the reliability of the data available and elimination of bias from importers and exporters.
 - (c) The use of a static model that cannot predict HWL's changes to competition from the subject country and other supplying countries with or without measures.
 - (d) [REDACTED] demand and price elasticities are unlikely to be accurately captured by the PIPES model.
 - (e) The price sensitivity of the industry is well known, and retail price points can change extremely quickly. [REDACTED]

Official Information Request

- 16 HWL requests the following information be disclosed under the *Official Information Act 1982*:
- (a) copies of all reports, working papers, memoranda, emails and other documents relating to the development of the PIPES model, including documents within and outside of MBIE;
 - (b) reports, correspondence with Ministers and other agencies in relation to the PIPES model;
 - (c) briefing notes to Ministers and officials relating to the Consultation Note and development of the PIPES model; and
 - (d) a list of parties who received the Consultation Note.

