



## ANALYSIS

Title	
1. Short Title and commencement	4. Matters to be evaluated and taken into account by Authority
2. Interpretation	5. Report by Authority
3. Reference of matters to Authority	6. Consequential amendments

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 1994, No. 130

**An Act to amend the Temporary Safeguard Authorities Act 1987**

[9 December 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Temporary Safeguard Authorities Amendment Act 1994, and shall be read together with and deemed part of the Temporary Safeguard Authorities Act 1987 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more orders may be made bringing different provisions into force on different dates.

**2. Interpretation**—The principal Act is hereby amended by repealing section 2 (as amended by section 18 (1) of the Tariff Act 1988 and by section 4 (1) of the Trade and Industry Act Repeal Act 1988), and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Authority’ means a Temporary Safeguard Authority established under section 3 of this Act:

“‘Directly competitive goods’, in relation to any goods, means goods that, as a matter of fact and commercial common sense, are substitutable for imported goods:

“‘Duty’ has the same meaning as in section 2 of the Tariff Act 1988:

- “‘Industry’, in relation to any goods, means—
- “(a) The New Zealand producers of like goods and directly competitive goods; or
- “(b) Such New Zealand producers of like goods and directly competitive goods whose collective output constitutes a major proportion of the New Zealand production of those goods:
- “‘Like goods’, in relation to any goods, means—
- “(a) Other goods that are like those goods in all respects; or
- “(b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:
- “‘Minister’ means the Minister of Commerce:
- “‘Rate of duty’ has the same meaning as in section 2 of the Tariff Act 1988:
- “‘Serious injury’ means significant overall impairment to the economic viability of a domestic industry:
- “‘Tariff’ has the same meaning as in section 2 of the Tariff Act 1988:
- “‘Working day’ means any day of the week other than—
- “(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s Birthday, and Waitangi Day; and
- “(b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and
- “(c) If the 1st day of January falls on a Friday, the following Monday; and
- “(d) If the 1st day of January falls on a Saturday or a Sunday, the following Monday and Tuesday:
- “‘WTO Agreement’ means the Agreement establishing the World Trade Organization adopted at Marrakesh on the 15th day of April 1994.”

**3. Reference of matters to Authority**—(1) Section 5 (1) of the principal Act is hereby amended—

(a) By omitting the word “material” in both places where it occurs, and substituting in each case the word “serious”; and

(b) By omitting the words “that produces like goods”.

(2) Section 5 of the principal Act is hereby further amended by adding the following subsections:

“(6) Unless the information is confidential or may be withheld under the Official Information Act 1982, persons having an interest in the matters that are the subject of the inquiry shall have access to all information relevant to the inquiry.

“(7) Where a person has submitted information to the Authority, and has shown good cause for the Authority to believe—

“(a) That the information would be of significant competitive advantage to a competitor of, or the disclosure of the information would have a significantly adverse effect upon,—

“(i) The person who submitted the information; or

“(ii) The person from whom the information was acquired by the person who submitted the information; or

“(iii) Any person to whom the information relates; or

“(b) That the information should otherwise be treated as confidential,—

the Authority shall not disclose that information, whether in a report under section 7 of this Act or otherwise, without the specific permission of any such person that would be adversely affected by its release.

“(8) The Authority may request persons who have submitted confidential information to provide—

“(a) A non-confidential summary of the information; or

“(b) If it is claimed that the information is not susceptible of such a summary, a statement of the reasons why such a summary cannot be provided,—

and the Authority may disregard any information in respect of which the person submitting it fails to provide either a satisfactory summary or satisfactory reasons why such a summary cannot be provided.”

**4. Matters to be evaluated and taken into account by Authority**—The principal Act is hereby amended by repealing section 6, and substituting the following section:

“6. (1) In determining for the purposes of section 5 (1) (a) of this Act whether an industry has suffered or is likely to suffer serious injury as a result of the importation of goods, the Authority shall (without limiting the matters it may consider) evaluate the following matters:

- “(a) The rate and amount of the increase in the volume and value of imports of the goods, in absolute and relative terms:
- “(b) The economic impact of the increased importation of the goods on the industry, including actual and potential decline in output, sales, market share, profits, productivity, employment, and utilisation of production capacity:
- “(c) Factors other than the imports which have injured, or are injuring, the industry:
- “(d) The nature and extent of importations of the goods, including the value, quantity, frequency, and purpose of the importation, by New Zealand producers of like or directly competitive goods.

“(2) The Minister may cause a statement of Government policy (which may include policies relating to international obligations) to be transmitted to the Authority, and shall publish that statement in the *Gazette* as soon as practicable after transmitting it to the Authority.

“(3) The Authority shall take into account any statement transmitted to it under subsection (2) of this section in its report to the Minister under section 7 of this Act.”

**5. Report by Authority**—The principal Act is hereby amended by repealing section 7 (as amended by section 18 (1) of the Tariff Act 1988), and substituting the following section:

“7. (1) An Authority which undertakes an inquiry under section 5 of this Act shall as soon as practicable, but not later than 30 working days after the date on which it received the request for the inquiry, report to the Minister on the matters that are the subject of the inquiry.

“(2) An Authority may report to the Minister that urgent action is necessary in relation to the importation of goods only if it is satisfied, having regard to the matters set out in section 6 (1) of this Act, that—

- “(a) The importation of the goods is causing or will cause serious injury to the industry; and
- “(b) That serious injury is not attributable to factors other than the importation of the goods; and
- “(c) It is not practicable for the industry to reduce the injury resulting from the importation by other measures of adjustment to such extent that urgent action would be unnecessary.

“(3) If the Authority reports that urgent action is necessary to protect the industry from serious injury in relation to the importation of the goods, it may recommend that any or all of the following measures be taken, if such measures are not incompatible with New Zealand’s obligations as a party to the WTO Agreement:

“(a) The imposition of any duty, or variation of any rate of duty, or exemption from any duty:

“(b) The restriction of the importation of the goods under the Customs Act 1966 or the Import Control Act 1988:

“(c) Any other action it considers appropriate.

“(4) In making any recommendation, the Authority shall also report what should be the rate, extent, and duration of any measures recommended by the Authority, as long as such rate, extent, and duration are not incompatible with New Zealand’s obligations as a party to the WTO Agreement.

“(5) The Authority shall, as soon as practicable after making its report to the Minister, cause the report to be published.”

**6. Consequential amendments**—(1) The Tariff Act 1988 is hereby consequentially amended by repealing so much of the Second Schedule as relates to the principal Act.

(2) The Trade and Industry Act Repeal Act 1988 is hereby amended by repealing so much of the First Schedule as relates to section 2 of the principal Act.

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This Act is administered in the Ministry of Commerce.

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