



Tariff (New Zealand–Thailand Closer Economic Partnership) Act 2005

Public Act 2005 No 78
Date of assent 21 June 2005
Commencement see section 2

Contents

| | | |
|---|--|--|
| 1 | Title | |
| 2 | Commencement | |
| | Part 1 | |
| | Implementation of preferential tariffs under New Zealand–Thailand Closer Economic Partnership Agreement | |
| 3 | Purpose | 15B Chief executive may undertake transitional safeguard investigation |
| 4 | Application of Tariff | 15C Investigative procedures |
| | Part 2 | 15D Matters to be taken into account by chief executive |
| | Application of transitional safeguard measures and provisional safeguard measures | 15E Publication of investigation results |
| 5 | Purpose | 15F Application of transitional safeguard measure |
| 6 | The Tariff | 15G Extension of transitional safeguard measure |
| 7 | New sections 15A to 15H inserted | 15H Provisional transitional safeguard measure |
| | 15A Interpretation | |

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Tariff (New Zealand–Thailand Closer Economic Partnership) Act 2005.
- (2) In this Act, the Tariff Act 1988 is called “the principal Act”.

2 Commencement

This Act comes into force on 1 July 2005.

Part 1

Implementation of preferential tariffs under New Zealand–Thailand Closer Economic Partnership Agreement

3 Purpose

This Part amends the principal Act to enable preferential tariffs conferred on Thailand under the New Zealand–Thailand Closer Economic Partnership Agreement to be implemented.

4 Application of Tariff

Section 7(1) of the principal Act is amended by adding the following paragraph:

- “(h) in the case of goods—
 - “(i) being the produce or manufacture of Thailand; and
 - “(ii) being goods included in a tariff item in respect of which a rate of duty is specified after the abbreviation ‘TH’ in the column headed ‘Preferential tariff’,—
at the rate so specified.”

Part 2

Application of transitional safeguard measures and provisional safeguard measures

5 Purpose

This Part amends the principal Act to provide for the application of transitional safeguard measures and provisional transitional safeguard measures in relation to the New Zealand–Thailand Closer Economic Partnership Agreement.

6 The Tariff

Section 3 of the principal Act is amended by inserting, after the words “Schedule 1 to this Act,”, the words “or with a transitional safeguard measure or a provisional transitional safeguard measure, as the case may require,”.

7 New sections 15A to 15H inserted

The principal Act is amended by inserting, after section 15, the following sections:

“15A Interpretation

In this section and sections 15B to 15H, unless the context otherwise requires,—

“**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

“**free trade agreement** means the New Zealand–Thailand Closer Economic Partnership Agreement done at Bangkok on 19 April 2005

“**industry**, in relation to any goods, means—

“(a) the New Zealand producers, as a whole, of like or directly competitive goods; or

“(b) the New Zealand producers of like or directly competitive goods whose collective output constitutes a major proportion of the total 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), goods that have characteristics closely resembling those goods

“**provisional transitional safeguard measure** means a provisional transitional safeguard measure applied under section 15H

“**serious injury** means a significant overall impairment in the position of a domestic industry

“**transitional safeguard measure** means a transitional safeguard measure applied under section 15F.

“15B Chief executive may undertake transitional safeguard investigation

“(1) The chief executive may undertake a transitional safeguard investigation to ascertain whether goods that have been subject to tariff reduction or removal after the entry into force of the free trade agreement—

“(a) are being imported in increased quantities (in absolute terms or relative to domestic production); and

- “(b) are causing, or threatening to cause, serious injury to an industry producing a like or directly competitive good.
- “(2) The chief executive may undertake a transitional safeguard investigation—
 - “(a) either—
 - “(i) after receiving a written request by or on behalf of an industry concerned, if the chief executive is satisfied that the request contains evidence to justify the investigation; or
 - “(ii) on his or her own initiative; and
 - “(b) only if the free trade agreement provides for the application of a transitional safeguard measure.

“15C Investigative procedures

- “(1) Before any transitional safeguard investigation, the chief executive must specify administrative procedures for the conduct of transitional safeguard investigations that—
 - “(a) are consistent with New Zealand’s international obligations; and
 - “(b) include the following matters:
 - “(i) the provision of public notice of the investigation; and
 - “(ii) an opportunity for interested parties to respond to submissions of other parties; and
 - “(iii) the treatment of confidential material provided by interested parties.
- “(2) The chief executive may amend the procedures specified under subsection (1).
- “(3) An amendment to the procedures does not apply to an investigation being undertaken when the amendment comes into force, unless the amendment specifies otherwise.
- “(4) The chief executive must publish the procedures, and any amendments to the procedures, in the *Gazette*.

“15D Matters to be taken into account by chief executive

When the chief executive is investigating, for the purposes of section 15B, whether the importation of goods subject to tariff reduction or removal is causing or threatens to cause serious injury to an industry, he or she must evaluate the following matters:

- “(a) the rate and amount of the increase in the volume of imports of the goods, in absolute terms and relative to domestic production; and
- “(b) the economic impact of the increased importation of the goods on the industry, including actual decline in output, sales, market share, profits, productivity, employment, and utilisation of production capacity; and
- “(c) factors other than the imports that have injured, or are injuring, the industry; and
- “(d) any other factors considered relevant to New Zealand’s international obligations.

“15E Publication of investigation results

- “(1) As soon as practicable after completing an investigation under section 15B, the chief executive must publish, in accordance with subsection (2), a report setting out the findings and conclusions of the investigation.
- “(2) The chief executive must—
 - “(a) make copies of the report available, free of charge, on the Internet; and
 - “(b) give notice in the *Gazette* stating that the report is available on the Internet, free of charge, and the website address.

“15F Application of transitional safeguard measure

- “(1) The Minister may decide to apply a transitional safeguard measure if he or she makes a determination, as a result of the investigation by the chief executive under section 15B, that goods—
 - “(a) are being imported in increased quantities (in absolute terms or relative to domestic production); and
 - “(b) are causing, or threatening to cause, serious injury to an industry producing a like or directly competitive good.
- “(2) A transitional safeguard measure applies on and from—
 - “(a) the date specified in the measure (which may be a date before, on, or after the date on which the determination is made); or
 - “(b) if no date is specified in the measure, the date on which the determination is made under subsection (1).

- “(3) A transitional safeguard measure expires—
- “(a) on the date specified in the measure; or
 - “(b) at an earlier date (if any) specified by the Minister by notice in the *Gazette*.
- “(4) The Minister must ensure that—
- “(a) any transitional safeguard measure is applied only to the extent necessary to prevent or remedy serious injury and facilitate adjustment; and
 - “(b) the nature, rate, extent, and duration of the transitional safeguard measure is consistent with New Zealand’s international obligations as a party to the free trade agreement; and
 - “(c) any transitional safeguard measure is consistent with the provisions of the free trade agreement; and
 - “(d) any transitional safeguard measure is not inconsistent with New Zealand’s other international obligations.
- “(5) The Minister’s decision to apply a transitional safeguard measure must be published as soon as practicable in the *Gazette*.
- “(6) A transitional safeguard measure, in the form of a duty, applied under subsection (5) is due and payable on the demand of the Customs on and from the date on which the measure applies under subsection (2).

“15G Extension of transitional safeguard measure

The Minister may extend the transitional safeguard measure applied under section 15F if the extension is consistent with New Zealand’s international obligations.

“15H Provisional transitional safeguard measure

- “(1) Following the initiation of an investigation under section 15B, the Minister may make a determination that there are grounds for applying a provisional transitional safeguard measure if he or she is satisfied that—
- “(a) goods that have been subject to tariff reduction or removal after the entry into force of the free trade agreement—
 - “(i) are being imported in increased quantities (in absolute terms or relative to domestic production); and

- “(ii) are causing, or threatening to cause, serious injury to an industry producing a like or directly competitive good; and
 - “(b) there exist highly unusual and critical circumstances; and
 - “(c) the delay in applying a transitional safeguard measure under section 15F would cause serious injury to the industry which would be difficult to repair.
- “(2) A provisional transitional safeguard measure applies on and from—
- “(a) the date specified in the measure (which may be a date before, on, or after the date on which the determination is made); or
 - “(b) if no date is specified in the measure, the date on which the determination is made under subsection (1).
- “(3) After making a determination under subsection (1), the Minister may apply a provisional transitional safeguard measure.
- “(4) The Minister must ensure that—
- “(a) any provisional transitional safeguard measure is applied only to the extent necessary to prevent or remedy serious injury and facilitate adjustment; and
 - “(b) the nature, rate, extent, and duration of the provisional transitional safeguard measure is consistent with New Zealand’s international obligations as a party to the free trade agreement; and
 - “(c) any provisional transitional safeguard measure is consistent with the provisions of the free trade agreement; and
 - “(d) any provisional transitional safeguard measure is not inconsistent with New Zealand’s other international obligations.
- “(5) The Minister’s decision to apply a provisional transitional safeguard measure must be published as soon as practicable in the *Gazette*.
- “(6) A provisional transitional safeguard measure, in the form of a duty, applied under subsection (3)—
- “(a) is due and payable on the demand of the Customs on and from the date on which the measure applies under subsection (2):

- “(b) must be refunded by the Customs in the circumstances specified in subsection (7).
- “(7) The circumstances referred to in subsection (6)(b) are—
- “(a) if an investigation under section 15B concludes that no serious injury has been caused to an industry; or
- “(b) in any other case, to the extent (if any) that the Minister requires the duty to be refunded.”

Legislative history

| | |
|--------------|--|
| 10 May 2005 | Introduction (Bill 263–1) |
| 17 May 2005 | First reading and referral to Foreign Affairs, Defence and Trade Committee |
| 2 June 2005 | Reported from Foreign Affairs, Defence and Trade Committee |
| 14 June 2005 | Second reading, committee of the whole House, third reading |
| 21 June 2005 | Royal assent |

This Act is administered in the Ministry of Foreign Affairs and Trade.
