

Trade (Safeguard Measures) Bill

Government Bill

As reported from the Foreign Affairs,
Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Trade (Safeguard Measures) Bill and recommends that it be passed with the amendments shown.

Introduction

The Trade (Safeguard Measures) Bill seeks to repeal the Temporary Safeguard Authorities Act 1987 and to implement a new safeguard regime for New Zealand that is consistent with the World Trade Organisation's rules and promotes efficient, transparent, and objective investigative and decision-making processes. "Safeguards" are emergency measures applied at New Zealand's border. They are usually in the form of a duty, and facilitate adjustment by a domestic industry to competition from increased imports.

Our commentary on the bill addresses only the more significant amendments. It does not cover any minor or technical amendments.

Overview clause

We recommend amending the bill to include an overview clause to explain that the safeguard measures provided in the bill represent just one of several trade remedies available, and to clarify the distinctions between them and guide potential users to the most appropriate form of remedy. In addition to safeguard measures, there are also remedies available against dumped and subsidised goods, which are provided for in the Dumping and Countervailing Duties Act 1988, and transitional safeguard measures, which are provided for in the Tariff Act 1988. The latter may be applied in certain circumstances under some of the free trade agreements entered into by New Zealand, if tariff reductions under the agreement have resulted in an injurious increase in imports from the free trade partner.

Provisional safeguard duty—termination or reduction

As introduced, clause 15 of the bill would provide the Minister with a wide-reaching discretionary power to terminate or reduce a provisional safeguard duty. We consider that this power is too wide and should be subject to a “parameter of compliance”. We therefore recommend an amendment to clause 15(1) to limit the Minister’s discretion to terminate a provisional safeguard measure by requiring that the Minister be no longer satisfied that there are reasonable grounds for believing that the conditions that justified imposing a provisional safeguard duty are met. We also recommend an amendment to clause 15(1) to limit the Minister’s discretion to reduce a provisional safeguard duty by requiring that the Minister be satisfied there are good reasons for doing so.

Refund of provisional safeguard duty

We recommend the amendment of clause 16(1)(a) to provide that the Minister must, unless satisfied that there is good reason for not doing so, refund the difference where provisional safeguard duty is more than the final duty. We consider it is appropriate that the Minister be required to make a positive decision not to remit the duty.

We recommend further amendment of clause 16(2) to provide that the Minister must, unless satisfied that there is a good reason for not doing so, refund the provisional safeguard duty where no final duty is imposed.

Provisional safeguard duty—exempting imported goods from certain countries from a provisional safeguard duty

We recommend an amendment to clause 13 of the bill to provide for the Minister to exempt imported goods from certain countries from a provisional safeguard duty on the same basis as a safeguard measure. As introduced, the bill proposes that the Minister is permitted to exempt imported goods from certain countries from a safeguard measure, but not from a provisional safeguard duty. We understand that this is necessary to comply with WTO rules that require the exemption of developing countries from a measure in certain circumstances, and to comply with the requirements of some of our free trade agreements that have a reciprocal mandatory or discretionary requirement to grant an exemption from a measure, or to further New Zealand's international relations or trade goals. We consider that it is just as important to be able to exempt certain countries from a provisional safeguard duty as from a safeguard measure.

Notification and publication

We recommend that the bill be amended to provide that the following Ministerial orders, which the bill as introduced provided were regulations and subject to disallowance by the House, be published in the Statutory Regulations (SR) series:

- imposing a provisional safeguard duty (clause 13)
- imposing a safeguard duty (clause 18)
- extending a safeguard duty (clause 22).

We recommend that the following Ministerial orders be treated as regulations and be subject to disallowance by the House (with consequential publication in the SR series):

- exempting imported goods from certain countries from a provisional safeguard duty (clause 13)
- terminating or reducing a provisional safeguard duty (clause 15)
- exempting imported goods from certain countries from a safeguard measure (clause 18)
- exempting imported goods from certain countries from an extended safeguard measure (clause 22)

- terminating or reducing a safeguard duty (clause 25).

We consider that our recommendations would provide consistency in the way actions were notified, published, and scrutinised by the House.

Types of safeguard measures

We recommend the deletion of clause 17(d), which provides that a safeguard measure can consist of “any other action the Minister considers appropriate”. We consider that the types of safeguard measures in clause 17(a) to (c) are comprehensive; and likely actions other than those provided for in the bill, such as the monitoring of particular imports by the Ministry of Economic Development, would not require legislative authority.

We also recommend an amendment to clause 17(b) to delete the words “or an exemption from any duty”, because there is no case in which a safeguard measure could be an exemption from a duty under the Tariff Act 1988.

Safeguard measure—exemption of imported goods from certain countries

We recommend amending clause 18(3) to clarify the purpose of the discretion of the Minister to exempt imported goods from specific countries from a safeguard measure. We consider that the purpose of the discretion should be to comply with New Zealand’s international obligations as a party to the World Trade Organisation Agreement or other agreements, or to further New Zealand’s international relations or trade goals. We understand that these trade goals might include managing a delicate stage in a trade negotiation process.

Notification of chief executive’s report

We recommend an amendment to clauses 18 and 23 to require the notification of the chief executive’s report about a safeguard investigation or safeguard review, to ensure conformity to WTO rules.

Duration of a provisional safeguard duty and a safeguard duty

We recommend an amendment to clauses 14(2), 19(2), and 23(2) to provide that the order making a provisional, final, or extended safeguard duty may specify that the duty will be for a period less than the minimum duration provided for in those clauses.

We believe that the Minister should have the flexibility to impose a lesser time in appropriate cases. The bill as introduced does not allow the Minister to impose a provisional safeguard duty, or a safeguard duty, or an extended safeguard duty, for less than 200 days, 4 or 8 years respectively.

Duration of measures other than a safeguard duty

Clauses 19 and 23 set out the periods for which a safeguard duty and an extended safeguard duty could apply, including their maximum duration. These clauses do not, however, specify the duration of a safeguard measure imposed by Order in Council under the Tariff Act 1988, the Customs and Excise Act 1996, or the Imports and Exports (Restrictions) Act 1988. A safeguard measure imposed under these Acts is subject under WTO rules to the same maximum duration as a safeguard duty and an extended safeguard duty. We recommend an amendment to clauses 19 and 23 to specify in these cases the periods that will apply and their maximum duration.

Extended safeguard measure—exemption of imported goods from certain countries

We recommend amending clause 22(3) of the bill to provide that the discretion of the Minister to exempt imported goods from specific countries from an extended safeguard measure is subject to compliance with New Zealand's international obligations as a party to the WTO Agreement or other agreements, or the need to further New Zealand's international relations or trade goals.

Safeguard measure—termination or reduction

We recommend an amendment to clause 25(1) of the bill to provide that the Minister's discretion to terminate or reduce a safeguard measure or to recommend the termination or reduction of a safeguard

measure is subject to the requirement that the Minister be satisfied that there are good reasons for doing so.

Safeguard review investigation—no ability to change measures

We recommend the deletion of clause 21(c)(ii), which provides that in a review of a safeguard measure, the chief executive must investigate which measure is appropriate. Our recommendation accords with WTO jurisprudence, which has established that in extending the duration of a measure the type of measure being applied must not be changed; for example, it would not be possible to change a safeguard duty to a quantitative restriction. To ensure consistency, we also recommend amending clause 22(1)(c) to delete the words “is the appropriate measure”.

Appendix

Committee process

The Trade (Safeguard Measures) Bill was referred to the committee on 11 March 2009. The closing date for submissions was 14 April 2009. We received and considered five submissions from interested groups and individuals. We received advice from the Ministry of Economic Development.

Committee membership

John Hayes (Chairperson)

Hon Chris Carter

Jacqui Dean

Hone Harawira (non-voting member from 17 June 2009)

Hon Pete Hodgson

Dr Paul Hutchison

Keith Locke

Todd McClay

Hon Maryan Street

Trade (Safeguard Measures) Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Trade (Safeguard Measures) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Trade (Safeguard Measures) Act **2008**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1
**Safeguard investigations, provisional
safeguard duty, and safeguard measures**

- 3 Purpose** 5
The purpose of this Act is to enable New Zealand to apply safeguard measures and provisional safeguard duties at its border in accordance with the Agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994 (the **WTO Agreement**). Such measures and duties are intended to— 10
- (a) provide temporary protection to a domestic industry from serious injury caused by increased imports; and
- (b) facilitate adjustment by a domestic industry to increased competition from increased imports.
- 3A Overview of safeguards** 15
- (1) Safeguard measures and provisional safeguard duties imposed under this Act are trade remedies.
- (2) Trade remedies are remedies against certain imports that are causing injury to New Zealand industries.
- (3) New Zealand's other trade remedies are— 20
- (a) anti-dumping duties under the Dumping and Countervailing Duties Act 1988 in relation to goods that are imported into New Zealand at less than their normal value in the exporting country;
- (b) countervailing duties under the Dumping and Countervailing Duties Act 1988 in relation to goods imported into New Zealand that are subsidised by a foreign government; 25
- (c) transitional safeguard measures (including provisional ones) under sections 15A to 15H of the Tariff Act 1988 in relation to imports from a country that is a party to certain free trade agreements with New Zealand. 30
- (4) This section is intended as a guide only.
- 4 Interpretation** 35
In this Act, unless the context otherwise requires,—
chief executive means the chief executive of the Ministry

- Customs** means the New Zealand Customs Service
- directly competitive goods**, in relation to imported goods, means goods that, as a matter of fact and commercial common sense, are substitutable for the imported goods
- domestic industry** means— 5
- (a) producers who produce like goods or directly competitive goods in New Zealand; or
 - (b) producers whose collective production constitutes a major proportion of the production in New Zealand of like goods or directly competitive goods 10
- extended safeguard duty** means a safeguard duty extended under **section 22(2)(a)**
- extended safeguard measure** means a safeguard measure extended under **section 22(2)**
- import** has the same meaning as importation in section 2(1) of the Customs and Excise Act 1996 15
- increased imports** means increased imports of goods into New Zealand, whether it is an absolute increase or a relative increase as compared with the amount of like goods or directly competitive goods produced in New Zealand 20
- like goods**, in relation to imported goods, means—
- (a) goods that are like the imported goods in all respects; or
 - (b) in the absence of goods referred to in **paragraph (a)**, goods that have characteristics closely resembling the imported goods 25
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 30
- provisional safeguard duty** means a duty imposed under **section 13(1)**
- safeguard duty** means a duty imposed under **section 18(2)(a)** 35
- safeguard investigation** means an investigation by the chief executive initiated by the Minister under **section 7**

safeguard measure has the meaning given by **section 17**

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

threat of serious injury means a serious injury that is clearly imminent 5

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 25 December in any year and ending with the close of 15 January in the following year. 10

5 Act binds the Crown

This Act binds the Crown.

6 Notification of decision or report 15

(1AA) For the purposes of this Act, a reference to **notifying a decision** means giving notice in the following ways that the decision has been made and the date on which it was made:

(a) in the *Gazette*; and

(b) free of charge, at all reasonable times, on an Internet site maintained by, or on behalf of, the Ministry. 20

(1) For the purposes of this Act, a reference to **notifying a decision report** means giving notice in the *Gazette* that—

(a) the ~~decision report~~ has been made and the date on which ~~the decision~~ it was made; and 25

(b) a copy of the ~~decision report~~ is ~~or will be~~ available for inspection during working hours, free of charge, and the place at which it can be inspected; and

(c) a copy of the ~~decision report~~ is ~~or will be~~ available on an Internet site, free of charge, and the Internet site address. 30

(2) In addition to notifying a ~~decision report~~ as provided in **sub-section (1)**, a copy of a ~~decision~~ the report must be made available—

(a) for inspection, during working hours, free of charge at the head office of the Ministry; and 35

- (b) free of charge, at all reasonable times, on an Internet site maintained by, or on behalf of, the Ministry.
- (3) A failure to notify a decision or report under **subsection (1AA) or (1)** or to take the actions required by **subsection (2)** does not invalidate the decision or report. 5

Safeguard investigation

7 Initiation of safeguard investigation

- (1) The Minister may initiate a safeguard investigation by the chief executive into increased imports if the Minister is satisfied that there are reasonable grounds for an investigation into whether increased imports are causing serious injury or a threat of serious injury. 10
- (2) The Minister may initiate a safeguard investigation either after an application or at the Minister's discretion.
- (3) The Minister must notify the decision to initiate a safeguard investigation, and that notification must state the date on which the investigation was initiated. 15

8 Application for safeguard investigation

- (1) An application for a safeguard investigation may be made by any person. 20
- (2) An application for a safeguard investigation must include the following information:
- (a) a complete description of the imported goods and the like goods or directly competitive goods:
- (b) the name of the applicant and whether the applicant is a producer in the domestic industry: 25
- (c) whether the applicant seeks the imposition of a provisional safeguard duty.
- (3) An application for a safeguard investigation must include as much of the following information as is reasonably possible: 30
- (a) whether there have been increased imports:
- (b) whether there is serious injury or a threat of serious injury:
- (c) a causal link between the increased imports and the serious injury or threat of serious injury: 35

- (d) whether the increased imports were due to unforeseen developments:
- (e) the level of support (if any) from domestic industry producers (apart from the applicant if the applicant is a producer in the domestic industry): 5
- (f) the names of domestic industry producers ~~other than those referred to in~~ **paragraph (e)**:
- (g) details of the volume and value of the domestic industry's production of the like goods or directly competitive goods in New Zealand by— 10
- (i) the applicant; and
- (ii) the producers referred to in **paragraph (e)**; and
- (iii) the producers referred to in **paragraph (f)**.
- 9 Submissions and information relating to safeguard investigation** 15
- (1) The chief executive must seek submissions relating to a safeguard investigation from interested persons (giving an appropriate time period) and must consider any submissions received.
- (2) The chief executive may require, at any time during a safeguard investigation, that the application under **section 8** for the safeguard investigation, or any submission or any other information relating to the safeguard investigation, be supported by a statutory declaration in the manner provided for by section 9 of the Oaths and Declarations Act 1957. 20
- (3) The chief executive may disregard any information relating to a safeguard investigation that the chief executive considers to be unreliable. 25
- 10 Access to information relevant to safeguard investigation and treatment of confidential information** 30
- (1) All interested persons are entitled to access all information relevant to a safeguard investigation, except for—
- (a) confidential information (unless the submitter of the confidential information consents to the confidential information being made available); or 35

- (b) other information that the chief executive considers should be withheld under the Official Information Act 1982.
- (2) The chief executive may request a submitter of information to provide to the chief executive— 5
- (a) a summary, for access by all interested persons, of confidential information or other information that the chief executive considers should be withheld under the Official Information Act 1982; or
- (b) reasons why such a summary cannot be provided. 10
- (3) If no document is provided after a request under **subsection (2)**, or if the chief executive is not satisfied with such a document, the chief executive may disregard the relevant information.
- (4) For the purposes of this section, **confidential information** 15 means information about which the submitter of the information has shown a good reason for the chief executive to believe 1 or more of the following:
- (a) making the information available would give a significant competitive advantage to a competitor of the submitter of confidential information: 20
- (b) making the information available would have a significantly adverse effect upon the submitter of confidential information:
- (c) the information should be treated as confidential for reasons other than the reasons described in **paragraph (a) or (b)**. 25

Compare: 1987 No 88 s 5(4)–(8)

11 Duration of safeguard investigation

- (1) The chief executive must make reasonable efforts to report to the Minister about a safeguard investigation within 75 working days after the date on which the Minister initiated the investigation. 30
- (2) **Subsection (1)** does not apply, and the chief executive must make reasonable efforts to report to the Minister within 85 35 working days after the date on which the Minister initiated the investigation, in the following circumstances:
- (a) if the applicant seeks a provisional safeguard duty; or

- (b) if a provisional safeguard duty is imposed under **section 13**.
- (3) If the chief executive is unable to report within the time period required by **subsection (1) or (2)**, the chief executive must give the Minister written reasons for being unable to report within the time period. 5
- (4) The Minister must set out any written reasons given by the chief executive under **subsection (3)** when the Minister notifies ~~the Minister's decision under **section 18(6)**~~ the chief executive's report under **section 18(4)(b)**. 10

12 Safeguard investigation

- (1) The matters the chief executive must investigate in a safeguard investigation include the following:
- (a) whether increased imports have caused serious injury or a threat of serious injury: 15
- (b) whether the increased imports were due to unforeseen developments:
- (c) whether a safeguard measure is necessary—
- (i) to prevent or remedy serious injury; and
- (ii) to facilitate adjustment by the domestic industry to the increased competition from the increased imports: 20
- (d) if a safeguard measure is necessary,—
- (i) which goods should be subject to a measure; and
- (ii) which measure is appropriate; and 25
- (iii) what is the appropriate extent and duration of the measure:
- (e) the public interest, which may entail, among other matters, a consideration of the following:
- (i) the likely effectiveness of a safeguard measure in assisting the domestic industry: 30
- (ii) the alternatives to a safeguard measure:
- (iii) the likely effect of a safeguard measure on the market (including on consumers):
- (iv) New Zealand's international relations and trade goals: 35
- (v) the strategic importance of the domestic industry.

- (2) In investigating whether there is serious injury or a threat of serious injury for the purposes of **subsection (1)(a)**, the chief executive must consider the impact of the increased imports on the domestic industry, including actual and potential decline in output, sales, market share, profits, productivity, employment, and utilisation of production capacity. 5
- (3) In investigating whether the increased imports have caused serious injury or a threat of serious injury for the purposes of **subsection (1)(a)**, the chief executive must consider— 10
- (a) the nature and extent of imports of the goods by the domestic industry, including the value, quantity, frequency, and purpose of the imports; and
 - (b) factors other than the imports that have injured, or are injuring, the domestic industry.

Provisional safeguard duty 15

13 Decision to impose Imposition of provisional safeguard duty

- (1) After the Minister has initiated a safeguard investigation under **section 7(1)**, the Minister may ~~impose order that~~ a provisional safeguard duty ~~be imposed on~~ imported goods if the Minister is satisfied that there are reasonable grounds to believe that— 20
- (a) a delay in imposing a safeguard measure ~~duty~~ would cause damage that would be difficult to repair; and
 - (b) increased imports are causing serious injury or a threat of serious injury. 25
- (2) ~~The Minister must notify the decision to impose a provisional safeguard duty.~~
- (3) ~~A decision to impose a provisional safeguard duty—~~
- (a) ~~is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives not later than 16 sitting days after the day on which it is made; but~~ 30
 - (b) ~~is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.~~ 35
- (2) The Minister may exempt imported goods from certain exporting countries from a provisional safeguard duty at any time,

including after the duty has been imposed, if the Minister is satisfied that an exemption—

(a) is necessary to comply with New Zealand’s international obligations as a party to the WTO Agreement or otherwise; or 5

(b) will further New Zealand’s international relations or trade goals.

(3) An order under **subsection (1)** and an exemption under **subsection (2)** are regulations for the purposes of the Regulations (Disallowance) Act 1989. 10

14 Duration of provisional safeguard duty

(1) Provisional safeguard duty is due and payable on the demand of the Customs on goods imported on and from—

(a) the first working day after the date of the notification of the decision to impose the duty; or 15

(b) a specified working day after the day referred to in **paragraph (a)**.

(1) Provisional safeguard duty is due and payable on the demand of the Customs on goods imported on and from the date specified in the order referred to in **section 13(1)**, which must be on or after the commencement of the order. 20

(2) Provisional safeguard duty is due and payable on the demand of the Customs on goods imported until the earliest of—

(aa) the date specified in the order referred to in **section 13(1)**; or 25

(a) the date of the notification of the decision to impose commencement of a safeguard measure; or

(b) 200 calendar days from the date the duty is due and payable under **subsection (1)**; or

(c) the date the provisional safeguard duty is terminated under **section 15(1)**. 30

15 Termination or reduction of provisional safeguard duty

(1) The Minister may terminate or reduce, with effect from the next working day, a provisional safeguard duty at the Minister’s discretion. 35

- (1) The Minister may order the termination of a provisional safeguard duty, with effect from a specified date that is after the commencement of the order, if the Minister is no longer satisfied that there are reasonable grounds to believe that—
- (a) a delay in imposing a safeguard measure would cause damage that would be difficult to repair; and 5
- (b) increased imports are causing serious injury or a threat of serious injury.
- (1A) The Minister may order the reduction of a provisional safeguard duty, with effect from a specified date that is after the commencement of the order, if the Minister is satisfied that there is a good reason to do so. 10
- (2) ~~The Minister must notify the decision to terminate or reduce a provisional safeguard duty.~~
- (2) An order under **subsection (1)** and an order under **subsection (1A)** are regulations for the purposes of the Regulations (Disallowance) Act 1989. 15

16 Effect of imposition of safeguard measure

- (1) The imposition of a relevant duty on imported goods has the following effects on any provisional safeguard duty paid on imports of those goods:
- (a) if the rate of the relevant duty is less than the rate of the provisional safeguard duty, the Minister ~~may~~, if must, unless satisfied that there is a good reason for not doing so, require the Customs to remit the amount of the difference to the importers who paid the provisional safeguard duty: 25
- (b) if the rate of the relevant duty is greater than the rate of the provisional safeguard duty, the importers who paid the provisional safeguard duty need not pay any more duty in relation to those imported goods. 30
- (2) If no relevant duty is imposed on imported goods on which provisional safeguard duty was paid, the Minister ~~may~~ must, unless satisfied that there is a good reason for not doing so, require the Customs to remit the amount of the provisional safeguard duty to the importers who paid the provisional safeguard duty. 35

- (3) In this section, **relevant safeguard measure duty** means a safeguard measure referred to in **section 17(a) or (b)**.

Safeguard measure

17 Safeguard measure

A **safeguard measure** is any of the following imposed on or in relation to imported goods following a safeguard investigation under this Act: 5

- (a) a safeguard duty: 5
- (b) a duty or a variation of any rate of duty ~~or an exemption from any duty~~ under the Tariff Act 1988: 10
- (c) a restriction on importing the goods under the Customs and Excise Act 1996 or the Imports and Exports (Restrictions) Act 1988.
- ~~(d) any other action the Minister considers appropriate.~~

18 Decision to impose or recommend Imposition of safeguard measure 15

- (1) After receiving the chief executive's report about a safeguard investigation, the Minister may take 1 or more of the actions set out in **subsection (2)** in relation to imported goods if the Minister is satisfied that— 20
- (a) increased imports have caused serious injury or a threat of serious injury; and
 - (b) the increased imports were due to unforeseen developments; and
 - (c) the safeguard measure is necessary— 25
 - (i) to prevent or remedy serious injury; and
 - (ii) to facilitate adjustment by the domestic industry to the increased competition from the increased imports; and
 - (d) the safeguard measure relates to the appropriate goods, is the appropriate measure, and is of the appropriate extent and duration; and 30
 - (e) the action is in the public interest; and
 - (f) the particular safeguard measure is not incompatible with New Zealand's international obligations as a party to the WTO Agreement or otherwise. 35

- (2) The actions the Minister may take are to—
- (a) ~~impose order that a safeguard duty be imposed~~; or
 - (b) recommend that the Governor-General make an Order in Council imposing a safeguard measure referred to in **section 17(b) or (c)**. 5
 - (c) impose a safeguard measure referred to in **section 17(d)**.
- (3) A decision to impose a safeguard duty under **subsection (2)(a)** or a safeguard measure under **subsection (2)(c)**—
- (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives not later than 16 sitting days after the day on which it is made; but 10
 - (b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989. 15
- (4) The Minister or the Governor-General by Order in Council (whichever is appropriate) may exempt imported goods from certain exporting countries from a safeguard measure at any time, including after the safeguard measure has been imposed.
- (5) An exemption under **subsection (4)** is not a regulation within the meaning of the Regulations (Disallowance) Act 1989. 20
- (6) The Minister must notify any action taken under **subsection (1) or (4)** and must also notify a decision to do nothing after receiving the chief executive's report about a safeguard investigation. 25
- (3) The Minister may exempt or may recommend that the Governor-General by Order in Council exempt (whichever is appropriate) imported goods from certain exporting countries from a safeguard measure at any time, including after the measure has been imposed, if the Minister is satisfied that an exemption— 30
- (a) is necessary to comply with New Zealand's international obligations as a party to the WTO Agreement or otherwise; or
 - (b) will further New Zealand's international relations or trade goals. 35
- (4) The Minister must—

- (a) notify a decision to do nothing after receiving the chief executive's report about a safeguard investigation:
- (b) after deciding to do nothing or taking an action under **subsection (1)**, notify the chief executive's report about a safeguard investigation, except for the following information: 5
- (i) confidential information; and
- (ii) any information that the chief executive considers could be withheld under the Official Information Act 1982. 10
- (5) An order under **subsection (2)(a)** and an exemption by the Minister under **subsection (3)** are regulations for the purposes of the Regulations (Disallowance) Act 1989.
- Compare: 1987 No 88 s 7
- 19 Duration of safeguard measure** 15
- (1) Safeguard duty is due and payable on the demand of the Customs on goods imported on and from—
- (a) the first working day after the date of the notification of the decision to impose the duty; or
- (b) a specified working day after the day referred to in **paragraph (a)**; 20
- (1) Safeguard duty is due and payable on the demand of the Customs on goods imported on and from the date specified in the order referred to in **section 18(2)(a)**, which must be on or after the commencement of the order. 25
- (2) Safeguard duty is due and payable on the demand of the Customs on goods imported until the earliest of—
- (aa) the date specified in the order referred to in **section 18(2)(a)**; or
- (a) 4 years after the date of the notification of the decision to impose commencement of the order referred to in **section 13(1)** that any provisional safeguard duty be imposed on that particular type of goods; or 30
- (b) 4 years from the date the duty is due and payable under **subsection (1)**; or 35
- (c) the date the safeguard duty is terminated under **section 25(1)**.

- (3) An extended safeguard duty is an exception to **subsection (2)(a) and (b)**.
- (4) A safeguard measure imposed by the Minister under **section 18(2)(c)** must come into effect on and from—
- (a) the first working day after the date of the notification of the decision to impose the measure; or
 - (b) a specified working day after the day referred to in **paragraph (a)**.
- (4) A safeguard measure imposed by an Order in Council recommended by the Minister under **section 18(2)(b)** must come into effect on and from the date specified in the Order in Council, which must be on or after the commencement of the Order in Council.
- (5) A safeguard measure imposed by an Order in Council recommended by the Minister under **section 18(2)(c) 18(2)(b)** must end with effect from the earliest of—
- (aa) the date specified in the Order in Council; or
 - (a) 4 years after the date of the notification of the decision to impose commencement of the order referred to in **section 13(1)** that any provisional safeguard duty be imposed on that particular type of goods; or
 - (b) 4 years from the date the safeguard measure comes into effect under **subsection (4)**; or
 - (c) the date the safeguard measure is terminated under **section 25(1)**.
- (6) A safeguard measure extended under **section 22(2)(c) 22(2)(b)** is an exception to **subsection (5)(a) and (b)**.

Safeguard review

20 Initiation of safeguard review

- (1) The Minister may initiate a review by the chief executive of a safeguard measure, and **sections 8(1), (2)(a) and (b), (3)(a) to (c) and (e) to (g), 9, 10, and 11(1), (3), and (4)** apply (with any necessary modifications) to the review as if the review were an investigation initiated under **section 7**.
- (2) The Minister may initiate a safeguard review either after an application or at the Minister's discretion.

- (3) The Minister must notify the decision to initiate a review of a safeguard measure, and that notification must state the date on which the review was initiated.

21 Safeguard review investigation

The matters the chief executive must investigate in a review of a safeguard measure include the following: 5

- (a) whether it is necessary to extend a safeguard measure in order to prevent or remedy serious injury:
- (b) whether there is evidence that the domestic industry is adjusting to increased competition from increased imports: 10
- (c) if an extended safeguard measure is necessary,—
 - (i) which goods should be subject to a measure; and
 - ~~(ii) which measure is appropriate; and~~
 - (iii) what is the appropriate extent and duration of the measure: 15
- (d) the public interest, which may entail, among other matters, a consideration of the following:
 - (i) the likely effectiveness of an extended safeguard measure in assisting the domestic industry: 20
 - (ii) the alternatives to an extended safeguard measure:
 - (iii) the likely effect of an extended safeguard measure on the market (including on consumers):
 - (iv) New Zealand's international relations and trade goals: 25
 - (v) the strategic importance of the domestic industry.

22 ~~Decision to impose or recommend extension~~ Extension of safeguard measure

- (1) After receiving the chief executive's report about the review of a safeguard measure, the Minister may take 1 or more of the actions set out in **subsection (2)** if the Minister is satisfied that— 30
- (a) this is necessary to prevent or remedy serious injury; and 35

- (b) an extension is appropriate having regard to the extent to which the domestic industry is adjusting to increased competition from increased imports; and
- (c) the proposed extended safeguard measure relates to the appropriate goods; ~~is the appropriate measure~~; and is of the appropriate extent and duration; and 5
- (d) the action is in the public interest; and
- (e) the particular extended safeguard measure is not incompatible with New Zealand's international obligations as a party to the WTO Agreement or otherwise. 10
- (2) The actions the Minister may take are,—
- (a) in relation to any safeguard duty that has been imposed, to ~~impose order that an extended safeguard duty be imposed~~; or
- (b) in relation to any safeguard measure referred to in **section 17(b) or (c)** that has been imposed, to recommend that the Governor-General make an Order in Council extending that safeguard measure. 15
- (c) ~~in relation to any safeguard measure referred to in **section 17(d)** that has been imposed~~; to extend that safeguard measure. 20
- (3) A decision to impose an extended safeguard duty under **subsection (2)(a)** or to extend a safeguard measure under **subsection (2)(c)**—
- (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and must be presented to the House of Representatives not later than 16 sitting days after the day on which it is made; but 25
- (b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989. 30
- (4) The Minister or the Governor-General by Order in Council (whichever is appropriate) may exempt imported goods from certain exporting countries from an extended safeguard measure at any time, including after the safeguard measure has been extended. 35
- (5) An exemption under **subsection (4)** is not a regulation within the meaning of the Regulations (Disallowance) Act 1989.
- (6) The Minister must notify any action taken under **subsection (1) or (4)** and must also notify a decision to do nothing after

receiving the chief executive's report about the review of a safeguard measure:

- (3) The Minister may exempt or may recommend that the Governor-General by Order in Council exempt (whichever is appropriate) imported goods from certain exporting countries from an extended safeguard measure at any time, including after the measure has been extended, if the Minister is satisfied that an exemption— 5
- (a) is necessary to comply with New Zealand's international obligations as a party to the WTO Agreement or otherwise; or 10
- (b) will further New Zealand's international relations or trade goals.
- (4) The Minister must—
- (a) notify a decision to do nothing after receiving the chief executive's report about the review of a safeguard measure: 15
- (b) after deciding to do nothing or taking an action under **subsection (1)**, notify the chief executive's report about the review of a safeguard measure, except for the following information: 20
- (i) confidential information; and
- (ii) any information that the chief executive considers could be withheld under the Official Information Act 1982. 25
- (5) An order under **subsection (2)(a)** and an exemption by the Minister under **subsection (3)** are regulations for the purposes of the Regulations (Disallowance) Act 1989.

23 Duration of extended safeguard measure

- (1) Extended safeguard duty is due and payable on the demand of the Customs on goods imported on and from— 30
- (a) the first working day after the date of the notification of the decision to extend a safeguard duty; or
- (b) a specified working day after the day referred to in **paragraph (a)**; 35
- (1) Extended safeguard duty is due and payable on the demand of the Customs on goods imported on and from the date specified

- in the order referred to in **section 22(2)(a)**, which must be on or after the commencement of the order.
- (2) Extended safeguard duty is due and payable on the demand of the Customs on goods imported until the earliest of—
- (aa) the date specified in the order under **section 22(2)(a)**; 5
or
- (a) 8 years after the date of the ~~notification of the decision to impose~~ commencement of the order under **section 13(1)** that any provisional safeguard duty be imposed on that particular type of goods; or 10
- (b) 8 years from the date the duty is due and payable under **section 19(1)**; or
- (c) the date the safeguard duty is terminated under **section 25(1)**.
- (3) ~~A safeguard measure extended by the Minister under **section 22(2)(c)** must come into effect on and from—~~ 15
- (a) ~~the first working day after the date of the notification of the decision to impose the measure; or~~
- (b) ~~a specified working day after the day referred to in **paragraph (a)**;~~ 20
- (3) A safeguard measure extended by an Order in Council recommended by the Minister under **section 22(2)(b)** must come into effect on and from the date specified in the order referred to in **section 22(2)(b)**, which must be on or after the commencement of the order. 25
- (4) A safeguard measure extended by an Order in Council recommended by the Minister under **section 22(2)(c)** ~~22(2)(b)~~ must end with effect from the earliest of—
- (aa) the date specified in the Order in Council; or
- (a) 8 years after the date of the ~~notification of the decision to impose~~ commencement of the order under **section 13(1)** that any provisional safeguard duty be imposed on that particular type of goods; or 30
- (b) 8 years from the date the safeguard measure comes into effect under **section 19(4)**; or 35
- (c) the date the safeguard measure is terminated under **section 25(1)**.

Duty must be paid to, and collected by, Customs

- 24 Duty must be paid to, and collected by, Customs**
All duty imposed under this Act must be paid to, and collected by, the Customs.

Termination or reduction of safeguard measure 5

- 25 Termination or reduction of safeguard measure**
- (1) ~~At the Minister's discretion, the~~ The Minister may, if the Minister is satisfied that there is a good reason to do so,—
- (a) ~~terminate or reduce, with effect from the next working day~~ order the termination or reduction, with effect from a specified date that is after the commencement of the order, of a safeguard measure referred to in **section 17(a) or (d)** (including if it has been extended under **section 22(2)**); or 10
- (b) ~~recommend the termination or reduction, with effect from a specified date that is after the commencement of the recommended Order in Council,~~ of a safeguard measure referred to in **section 17(b) or (c)** (including if it has been extended under **section 22(2)**). 15
- ~~(2) The Minister must notify the decision to terminate or reduce a safeguard measure.~~ 20
- (2) An order under **subsection (1)(a)** is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

Part 2**Miscellaneous matters** 25

- 26 Temporary Safeguard Authority abolished with no compensation for loss of office**
- (1) Except as necessary for the purposes of **section 27**, all Temporary Safeguard Authorities appointed under the Temporary Safeguard Authorities Act 1987 are abolished. 30
- (2) No member of a Temporary Safeguard Authority is entitled to compensation for loss of office.

27 Transitional provision

The following apply in relation to an inquiry by a Temporary Safeguard Authority under the Temporary Safeguard Authorities Act 1987 that the Minister requested before this Act came into force:

- (a) the inquiry must be completed under that Act as if this Act had not been passed; and
- (b) the Temporary Safeguard Authority has all the powers it would have had if this Act had not been passed; and
- (c) the Minister may take any action in response to the Temporary Safeguard Authority's report as if this Act had not been passed.

28 Consequential amendments to Customs and Excise Act 1996

- (1) This section amends the Customs and Excise Act 1996.
- (2) The definition of **duty** in section 2(1) is amended by inserting the following paragraph after paragraph (b):
“(ba) provisional safeguard duty, safeguard duty, and extended safeguard duty imposed under the Trade (Safeguard Measures) Act **2008**.”
- (3) Section 102(4) is amended by adding “or under the Trade (Safeguard Measures) Act **2008**”.
- (4) Section 113(5) is amended by adding “or under the Trade (Safeguard Measures) Act **2008**”.
- (5) Section 116(7) is amended by adding “or under the Trade (Safeguard Measures) Act **2008**”.
- (6) Section 117(8) is amended by adding “or under the Trade (Safeguard Measures) Act **2008**”.

29 Consequential amendment to Official Information Act 1982

- (1) This section amends the Official Information Act 1982.
- (2) Schedule 1 is amended by omitting the item relating to Temporary Safeguard Authorities appointed under the Temporary Safeguard Authorities Act 1987.

Trade (Safeguard Measures) Bill

30 Consequential amendment to Trans-Tasman Mutual Recognition Act 1997

- (1) This section amends the Trans-Tasman Mutual Recognition Act 1997.
- (2) Schedule 1 is amended by omitting “Temporary Safeguard Authorities Act 1987” and substituting “Trade (Safeguard Measures) Act **2008**”. 5

31 Repeal

The Temporary Safeguard Authorities Act 1987 (1987 No 88) is repealed. 10

Legislative history

9 September 2008
11 March 2009

Introduction (Bill 294–1)
First reading and referral to Foreign Affairs,
Defence and Trade Committee
