



## ANALYSIS

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1987, No. 88

**An Act to provide for the appointment of Temporary Safeguard Authorities and to define their functions**

[13 June 1987

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

**1. Short Title**—This Act may be cited as the Temporary Safeguard Authorities Act 1987.

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

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

“Customs duty” means any duty within the meaning of the Customs Act 1966:

“Customs tariff” has the same meaning as defined in section 2 of the Customs Act 1966:

“Industry”, in relation to any goods, means—

(a) The New Zealand producers of like goods; or

(b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods;—

but does not include importers of those goods:

“Like goods”, in relation to any goods, means—

(a) Other goods that are like those goods in all respects:

(b) Other goods which have characteristics closely resembling those goods:

“Minister” means the Minister of Trade and Industry:

“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 3rd day of January in the following year.

**3. Establishment of Authorities**—(1) The Minister may from time to time appoint such persons as the Minister thinks fit to be Temporary Safeguard Authorities for the purposes of this Act.

(2) Any person appointed as an Authority or as a member of an Authority shall be appointed for such term, not exceeding 3 years, as may be specified in the instrument of appointment of that Authority, and may from time to time be reappointed, or may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister, or may at any time resign the office by writing addressed to the Minister.

(3) No person appointed under this section shall exercise any functions of an Authority in respect of any matter in which that person has, directly or indirectly, any pecuniary interest apart from any interest in common with the public.

(4) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason only of that person being an Authority or a member of an Authority.

(5) The Department of Trade and Industry shall be responsible for ensuring that each Temporary Safeguard Authority is provided, whether by secondment or otherwise, with such secretarial and other services as are necessary to enable the Authority to carry out any inquiry under this Act and to report as efficiently and expeditiously as possible.

**4. Authority to have certain powers of Commission of Inquiry**—For the purposes of an inquiry pursuant to section 5 (1) of this Act, sections 4A, 4B, 4C, 4D, 5, 6, 7, 8, and 9 of the

Commissions of Inquiry Act 1908 shall apply to every Authority as if it were a Commission of Inquiry established under that Act.

**5. Reference of matters to Authority—**(1) Where it appears to the Minister that the importation of any goods has caused or may cause material injury to an industry that produces like goods, the Minister may request an Authority to undertake an inquiry in relation to the importation of the goods and to report on the following matters:

(a) Whether the industry has suffered or is likely to suffer material injury as a result of the importation of the goods having regard to the matters set out in section 6 of this Act; and

(b) If the industry has suffered or is likely to suffer such injury,—

(i) Whether urgent action is necessary to protect the industry in relation to the importation of the goods; and

(ii) If such action is considered necessary, the nature of the protection that is considered by the Authority to be appropriate in all the circumstances, and the extent and duration of such protection.

(2) The Minister shall cause every request made to an Authority under subsection (1) of this section to be published in the *Gazette* as soon as practicable after making it, and shall lay a copy of it before the House of Representatives.

(3) Subject to section 3 (3) of this Act, on receipt of the request the Authority shall forthwith undertake the inquiry.

(4) The Authority shall, in such manner as it thinks fit, call for submissions from persons having an interest in the matters that are the subject of the inquiry and may specify a date by which any submissions must be received by the Authority.

(5) The Authority shall, in the course of the inquiry, consider any submissions received in response to a call for submissions made pursuant to subsection (4) of this section.

**6. Matters to be taken into consideration by Authority—**(1) The Authority shall, in determining for the purposes of section 5 (1) (a) of this Act whether an industry has suffered or is likely to suffer material injury as a result of the importation of goods, have regard to the following matters:

(a) The extent to which there has been a significant increase in the volume of imports of the goods, either in absolute terms, or in relation to production or consumption in New Zealand; and

- (b) The extent to which the effect of the increased importation of the goods is significantly to depress prices for the goods in New Zealand or significantly to prevent price increases for the goods which otherwise would have occurred; and
- (c) The economic impact of the increased importation of the goods on the industry including—
  - (i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
  - (ii) Factors affecting domestic prices; and
  - (iii) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments; and
- (d) Any policies of the Government as transmitted in writing from time to time to the Authority by the Minister.

(2) The Minister shall cause every statement of policy transmitted to an Authority under subsection (1)(d) of this section to be published in the *Gazette* as soon as practicable after transmitting it.

**7. Report by Authority—**(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 material injury to the industry; and
- (b) That material injury relates solely to the importation of those goods and to no other circumstances; 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 material injury in relation to the importation of the goods, it may recommend that any or all of the following measures be taken:

- (a) The imposition or variation of any Customs duty or the creation or removal of any exemption from duty, including any duty or exemption from duty in the Preferential Tariff (as defined in section 2 (1) of the Customs Act 1966):
- (b) The restriction of the importation of the goods under the Customs Act 1966 or the Trade and Industry Act 1956:
- (c) The provision of payments by the Crown to the industry by way of production bounty in such manner as the Authority shall specify:
- (d) Any other action it considers appropriate.

(4) In making any such recommendation the Authority shall also report what should be the rate, extent, and duration (being not longer than 12 months from the date of imposition) of any measures recommended by the Authority.

(5) Subject to subsection (6) of this section the Authority shall, as soon as practicable after making its report to the Minister, cause the report to be published.

(6) Nothing in subsection (5) of this section shall require the Authority to disclose information which could properly be withheld under the Official Information Act 1982.

**8. Remuneration and travelling expenses**—(1) Every Authority established under this Act is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to members of Authorities remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

**9. Money to be appropriated by Parliament for the purposes of this Act**—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

**10. Proceedings privileged**—(1) No proceedings, civil or criminal, shall lie against an Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Authority acted without reasonable care or in bad faith.

(2) No proceedings, civil or criminal, shall lie against any person who is an Authority, or any officer of an Authority, for anything that person may do or say or fail to do or say in the course of the operations of the Authority, unless it is shown that that person acted in bad faith.

**11. Consequential amendments**—The Official Information Act 1982 is hereby consequentially amended by omitting from the First Schedule the following items:

“The Emergency Protection Authorities appointed for the purposes of the Industries Development Commission Act 1961;

“The Industries Development Commission; and inserting, in its appropriate alphabetical order, the following item:

“Temporary Safeguard Authorities appointed under the Temporary Safeguard Authorities Act 1987.”

**12. Repeals and savings**—(1) The enactments set out in the Schedule to this Act are hereby repealed.

(2) The provisions of sections 10A to 10E of the Industries Development Commission Act 1961 shall, notwithstanding the repeal of that Act by subsection (1) of this section, for the purposes of the completion of any inquiry undertaken by an Emergency Protection Authority before the commencement of this Act, continue to apply as if subsection (1) of this section had not been enacted.

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## SCHEDULE

Section 12 (1)

### ENACTMENTS REPEALED

- 1961, No. 123—The Industries Development Commission Act 1961 (Reprinted 1975, Vol. 3, p. 2039).
- 1964, No. 113—The Industries Development Commission Amendment Act 1964 (Reprinted 1975, Vol. 3, p. 2054).
- 1965, No. 31—The Industries Development Commission Amendment Act 1965 (Reprinted 1975, Vol. 3, p. 2054).
- 1967, No. 52—The Industries Development Commission Amendment Act 1967 (Reprinted 1975, Vol. 3, p. 2055).
- 1970, No. 37—The Industries Development Commission Amendment Act 1970 (Reprinted 1975, Vol. 3, p. 2056).
- 1971, No. 136—The Industries Development Commission Amendment Act 1971 (Reprinted 1975, Vol. 3, p. 2056).
- 1975, No. 33—The Industries Development Commission Amendment Act 1975 (Reprinted 1975, Vol. 3, p. 2057).

FIRST SCHEDULE—*continued*

- 1979, No. 55—The Industries Development Commission Amendment Act 1979.
- 1982, No. 80—The Industries Development Commission Amendment Act 1982.

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This Act is administered in the Department of Trade and Industry.

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