

Trade (Safeguard Measures) Bill

Government Bill

Explanatory note

General policy statement

This Bill implements a new safeguards regime for New Zealand.

Safeguards are emergency measures applied at the border, usually in the form of a duty, which may be taken to provide temporary protection to a domestic industry from injury caused by a surge in imported goods resulting from unforeseen developments. Safeguards are provided for under the General Agreement on Tariffs and Trade (**GATT**) and the World Trade Organisation (**WTO**) Agreement on Safeguards and are intended to facilitate adjustment by a domestic industry to increased imports.

This Bill repeals the Temporary Safeguard Authorities Act 1987, which embodies New Zealand's current safeguards regime, and replaces it with a new regime designed to ensure that it is consistent with WTO rules and to promote efficient, transparent, and objective investigative and decision-making processes.

The Bill includes matters that must be considered when determining whether the application of a safeguard measure is in the public interest. This inclusion is aimed at promoting certainty and transparency. The Bill provides that safeguard investigations be undertaken by the Ministry of Economic Development rather than by independent Temporary Safeguard Authorities, to allow the expertise of the Ministry to be fully utilised in the undertaking of investigations and align the

conduct of safeguard investigations with those for other trade remedy investigations into dumped or subsidised imports. The Bill extends the time frame for completing such investigations to ensure a WTO-compliant investigation can be undertaken.

Where a safeguard measure is warranted, the Bill provides for the responsible Minister to impose a final and provisional safeguard duty or to recommend that other measures be taken. To comply with WTO rules, the Bill also authorises the Minister of Commerce to extend, liberalise, and terminate a safeguard duty following a review.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the commencement of the Bill. It comes into force on the day after it receives the Royal assent.

Part 1

Safeguard investigations, provisional safeguard duty, and safeguard measures

Clause 3 states the Bill's purpose. This is to enable New Zealand to apply safeguard measures at its border in accordance with the agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

Clause 4 provides for the definition of terms used in the Bill. Key terms are: directly competitive goods, domestic industry, increased imports, like goods, serious injury, and threat of serious injury.

Clause 5 provides that the Bill will bind the Crown.

Clause 6 sets out how decisions under the Bill must be notified. This involves giving notice in the *Gazette* that the decision has been made and where a copy of the decision is or will be available for inspection. As well as notifying a decision in the *Gazette*, a copy of the decision must be available for inspection at the head office of the Ministry of Economic Development (or any other Ministry for the time being responsible for the administration of the Bill) and on the Internet.

The Government considers that the separate notification procedures required in the Bill, including for the decisions that are legislative in nature, are more appropriate in the circumstances than publication in the Statutory Regulations series.

Safeguard investigation

Clause 7 is concerned with how a safeguard investigation is initiated. An investigation may be initiated at the Minister's discretion or after an application. The Minister may initiate an 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 (defined as a significant overall impairment in the position of a domestic industry) or a threat of serious injury (defined as a serious injury that is clearly imminent).

Clause 8 is concerned with applications for a safeguard investigation. These may be made by any person, and must include the requisite information.

Clause 9 relates to the chief executive's obligation to seek submissions relating to a safeguard investigation from interested persons (*subclause (1)*). The clause is also concerned with the chief executive's ability, at any time during a safeguard investigation, to require an application or submission or any other information relating to the safeguard investigation to be supported by a statutory declaration. Finally, the clause entitles the chief executive to disregard any information relating to a safeguard investigation that he or she considers to be unreliable.

Clause 10 sets out the right of all interested persons to access all information relevant to a safeguard investigation, except for confidential information or other information that the chief executive considers should be withheld under the Official Information Act 1982. The clause then provides that the chief executive may request a summary of such information and, if not satisfied with such a summary, or if the request is ignored, the chief executive may disregard the information.

Clause 11 sets out how long a safeguard investigation must be. The deadline for the chief executive is 85 days after the date on which the Minister initiated the investigation if the applicant seeks provisional safeguard duty or if that is imposed. For all other safeguard investigations, the deadline is 75 working days after the investigation is initiated.

Clause 12 sets out the matters the chief executive must investigate. Essentially, these are whether or not there is a serious injury or a threat of serious injury caused by the increased imports, and whether

the increased imports were due to unforeseen developments. The other considerations concern the nature of any safeguard measure and the public interest.

Provisional safeguard duty

Clause 13 describes the circumstances in which the Minister may impose a provisional safeguard duty.

Clause 14 provides for the length of time a provisional safeguard duty is due and payable on the demand of the New Zealand Customs Service (the **Customs**) on imported goods.

Clause 15 provides that the Minister may terminate or reduce a provisional safeguard duty at the Minister's discretion.

Clause 16 describes the effect of the imposition of a safeguard measure on provisional safeguard duty already paid. If the relevant duty imposed as a safeguard measure is less than the provisional safeguard duty already paid, the Minister can require a remit of the amount of the difference. If no relevant duty is imposed as a safeguard measure, then, again, the Minister may require a remit.

Safeguard measure

Clause 17 sets out the 4 different types of safeguard measure, which are any of the following imposed on or in relation to imported goods:

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

Clause 18 describes the circumstances in which safeguard measures can be imposed.

Clause 19 provides for the length of time a safeguard duty is due and payable on the demand of the Customs on imported goods. It also sets out the length of time a safeguard measure imposed under *clause 18(2)(c)* is in effect.

Clause 20 is concerned with how a review of a safeguard measure is initiated. A review may be initiated at the Minister's discretion or

after an application. The clause provides that earlier clauses apply (with any necessary modifications) to a review as if the review were an investigation initiated under *clause 7*.

Clause 21 describes the circumstances in which safeguard measures can be reviewed.

Clause 22 describes the circumstances in which extended safeguard measures can be imposed.

Clause 23 provides for the length of time an extended safeguard duty is due and payable on the demand of the Customs on imported goods. It also sets out the length of time an extended safeguard measure imposed under *new section 22(2)(c)* is in effect.

Duty must be paid to, and collected by, Customs

Clause 24 provides that all duty imposed under this Bill must be paid to, and collected by, the Customs.

Termination or reduction of safeguard measure

Clause 25 provides for the way in which a safeguard measure may be terminated or reduced.

Part 2

Miscellaneous matters

Clause 26 provides that, except as necessary for the purposes of *clause 27*, Temporary Safeguard Authorities established under the Temporary Safeguard Authorities Act 1987 are abolished. No member of a Temporary Safeguard Authority is entitled to compensation for loss of office.

Clause 27 provides that, in relation to an inquiry by a Temporary Safeguard Authority under the Temporary Safeguard Authorities Act 1987 that the Minister requested before this Bill is passed into law, the following apply:

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

Clauses 28 to 31 provide for consequential amendments and the repeal of the Temporary Safeguard Authorities Act 1987.

Regulatory impact statement

Statement of nature and magnitude of problem and need for government action

Safeguards are emergency measures applied at the border, usually in the form of a duty, which may be taken to provide temporary protection to a domestic industry being injured by a surge in imported goods.

Safeguards are provided for under the General Agreement on Tariffs and Trade (**GATT**) and the World Trade Organization (**WTO**) Agreement on Safeguards, collectively referred to in this statement as **WTO rules**. Safeguard measures are intended to facilitate adjustment by a domestic industry to increased import competition.

The Temporary Safeguard Authorities Act 1987 (**TSA Act**) provides for the investigation required under **WTO rules** to be carried out by independent Temporary Safeguard Authorities into whether a safeguard measure should be applied. A review of the **TSA Act** was prompted by decisions of the **WTO Dispute Settlement Body (the DSB)** relating to safeguards. This jurisprudence indicates that it is likely to be very difficult to complete a **WTO** compliant investigation within the current 30-working-day time frame.

While the review was initially prompted by **DSB** decisions, the review has also provided the opportunity to make changes to the current regime to improve the investigative and decision-making process and clarify some definitional inconsistencies between the **TSA Act** and the Agreement on Safeguards.

The **TSA Act** currently provides for independent Temporary Safeguard Authorities to undertake investigations despite the expertise for undertaking investigations of this type and the knowledge of **WTO** safeguard jurisprudence being held within the Ministry. The necessity to extend the investigation time frame is also likely to reduce the availability of suitably qualified persons to act as temporary safeguard authorities, making recruitment more difficult. The **TSA Act** also lacks a mechanism for applying a safeguard measure. In order to apply a measure, recourse to other legislative instruments is necessary. Safeguard measures in the form of duties or quantitative

restrictions must be implemented under other instruments by Order in Council, a potentially lengthy process which can reduce the potential effectiveness of the measure.

While only 4 investigations have been carried out under the TSA Act since 1987, with 1 resulting in a safeguard being applied, the ongoing potential for volatility in international markets and New Zealand's current tariff liberalisation agenda heighten the likelihood of a New Zealand industry seeking a safeguard investigation. This potentially exposes New Zealand to greater risk of WTO dispute settlement, highlighting the need to improve the efficiency and clarity of safeguards legislation.

Statement of public policy objective(s)

The key objectives of the review of the TSA Act are to ensure that New Zealand's safeguards regime—

- is consistent with WTO rules; and
- provides for an efficient, transparent, and objective investigative and decision-making process.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving desirable objective(s)

Non-regulatory option(s)

No non-regulatory measures exist that would be capable of achieving the specified objectives. The source of the current problems is the inconsistency between the current legislation, and WTO rules and legislative best practice.

Regulatory option (preferred option)

Consultation with stakeholders and further analysis by officials has revealed a number of necessary amendments to the TSA Act. Significant recommendations are that—

- the current requirement, that the public interest be considered before a safeguard measure is applied, be retained and that guidelines for determining whether application of a safeguard measure is in the public interest be introduced into revised

legislation as well as requiring the investigating authority to consider and make recommendations on the guidelines:

- safeguard investigations be undertaken by the Ministry of Economic Development rather than by independent Temporary Safeguard Authorities:
- the Minister of Commerce be authorised to apply final and provisional safeguard duties, and grant refunds where appropriate:
- the time frame for a safeguard investigation be increased from the current 30 working days to 75 working days with an automatic extension to 85 working days if provisional measures are requested. The length of the Christmas/New Year period excluded from the investigation time frame should also be extended.

A number of other minor or technical amendments are also proposed. These include—

- making the Ministry of Economic Development the point of lodgement for applications seeking safeguard investigations, and specifying in general terms what applications must contain in terms of sufficient evidence:
- incorporating or clarifying various definitions and provisions from the WTO Agreement on Safeguards, relating to definitions of serious injury, threat of serious injury, domestic industry, and provision for extension, review, and liberalisation of safeguard measures:
- repealing provisions relating to—
 - the investigating authority's powers of inquiry; and
 - the provision of a statement of government policy to the investigating authority.

Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

Government

The key benefit of the preferred option to Government is a significant reduction in the risk of a successful WTO dispute settlement or ju-

dicial review, should an investigation be concluded and a safeguard measure applied. Like judicial review, a WTO dispute is a costly and resource intensive process, requiring consultation between disputing parties and providing for a complainant to request establishment of a panel to adjudicate on the matter where no agreement is reached. Requiring the Ministry of Economic Development to undertake investigations rather than independent Temporary Safeguard Authorities will also reduce costs, with most investigation costs being met out of existing Ministry budgets and resources.

Business

There are not expected to be any significant additional costs to business (principally domestic industry, competing importers, and their respective customers) arising out of the proposals made here. Costs to business largely involve preparing for, and participating in, a safeguard investigation. Although an extension is proposed to the investigation time frame, because the key evidentiary components of the investigation remain essentially unchanged, no significant increase in the cost to participate is expected.

Business will benefit from improved clarity in legislation, transparency of process, and the creation of a single government point of contact for all trade remedy inquiries.

Society

New Zealand as a whole benefits significantly from the reduction of trade barriers. As a limited exception to freer trade, an effective safeguard regime has the potential to promote support for future trade liberalisation among import-competing domestic manufacturers.

An effective safeguard regime, as part of a coherent trade remedies regime, could also have positive effects on investment by providing a means to protect domestic industry from international supply shocks. The temporary, targeted, and adjustment orientation of safeguards means they are not contrary, but complementary, to trade policies such as tariff reduction.

Statement of consultation undertaken

Stakeholder consultation

Consultation was undertaken, through the release of a discussion paper, with a range of New Zealand business groups and firms. These included significant users of trade remedies, business organisations, importers, the current Temporary Safeguard Authorities appointed under the TSA Act, consultants in the trade remedies field, and the New Zealand Council of Trade Unions.

There was general support from stakeholders for the proposed amendments to the TSA Act with 2 exceptions, as set out below.

The proposed guidelines for considering whether a safeguard measure is in the public interest were not canvassed in the discussion paper. Although this proposal was not canvassed, guidelines are favoured because they promote certainty and transparency of process without altering the status quo in terms of core considerations of the decision-maker and investigating body. Stakeholders will also have the opportunity to make submissions on appropriate guidelines during the select committee stage.

Some submitters supported an amended investigation time frame shorter than that proposed. Officials consider that the proposed time frames are the minimum times required to complete a WTO compliant investigation, one of the central policy objectives of the review.

Government departments/agencies consultation

The following government departments were consulted during the preparation of the discussion paper and this paper: the Ministry of Foreign Affairs and Trade, the New Zealand Customs Service, and the Treasury, and these departments agree with the recommendations in this paper. The Department of the Prime Minister and Cabinet was also notified.

Hon Lianne Dalziel

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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 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 are intended to—
- (a) provide temporary protection to a domestic industry from serious injury caused by increased imports; and 10
 - (b) facilitate adjustment by a domestic industry to increased competition from increased imports. 10
- 4 Interpretation** 15
In this Act, unless the context otherwise requires,— 15
- 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 20
- domestic industry** means—
- (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 25
- 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)** 30
- import** has the same meaning as importation in section 2(1) of the Customs and Excise Act 1996
- 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 35

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

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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

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provisional safeguard duty means a duty imposed under **section 13(1)**

safeguard duty means a duty imposed under **section 18(2)(a)**

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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

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

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.

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5 Act binds the Crown

This Act binds the Crown.

6 Notification of decision

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

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- (a) the decision has been made and the date on which the decision was made; and
 - (b) a copy of the decision is or will be available for inspection during working hours, free of charge, and the place at which it can be inspected; and 5
 - (c) a copy of the decision is or will be available on an Internet site, free of charge, and the Internet site address.
- (2) In addition to notifying a decision as provided in **subsection (1)**, a copy of a decision must be made available—
- (a) for inspection, during working hours, free of charge at the head office of the Ministry; and 10
 - (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 under **subsection (1)** or to take the actions required by **subsection (2)** does not invalidate the decision. 15

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. 20
- (2) The Minister may initiate a safeguard investigation either after an application or at the Minister's discretion. 25
- (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.

8 Application for safeguard investigation

- (1) An application for a safeguard investigation may be made by any person. 30
- (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: 35

- (b) the name of the applicant and whether the applicant is a producer in the domestic industry:
 - (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:
- (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:
 - (d) whether the increased imports were due to unforeseen developments:
 - (e) support (if any) from domestic industry producers (apart from the applicant if the applicant is a producer in the domestic industry):
 - (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—
 - (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

- (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.

- (3) The chief executive may disregard any information relating to a safeguard investigation that the chief executive considers to be unreliable.
- 10 Access to information relevant to safeguard investigation and treatment of confidential information** 5
- (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 10
 - (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— 15
- (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. 20
- (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,— 25
- confidential information** means information about which the submitter of the information has shown 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: 30
 - (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)**. 35

Compare: 1987 No 88 s 5(4)–(8)

- 11 Duration of safeguard investigation** 5
- (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. 5
- (2) **Subsection (1)** does not apply, and the chief executive must make reasonable efforts to report to the Minister within 85 working days after the date on which the Minister initiated the investigation, in the following circumstances: 10
- (a) if the applicant seeks a provisional safeguard duty; or 10
- (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. 15
- (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)**.
- 12 Safeguard investigation** 20
- (1) The matters the chief executive must investigate in a safeguard investigation include the following: 20
- (a) whether increased imports have caused serious injury or a threat of serious injury: 25
- (b) whether the increased imports were due to unforeseen developments: 25
- (c) whether a safeguard measure is necessary— 30
- (i) to prevent or remedy serious injury; and
- (ii) to facilitate adjustment by the domestic industry to the increased competition from the increased imports: 30
- (d) if a safeguard measure is necessary,— 35
- (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: 35
- (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:
 - (ii) the alternatives to a safeguard measure:
 - (iii) the likely effect of a safeguard measure on the market (including on consumers): 5
 - (iv) New Zealand's international relations and trade goals:
 - (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. 10
- (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— 15
- (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 20
 - (b) factors other than the imports that have injured, or are injuring, the domestic industry.

Provisional safeguard duty

- 13 Decision to impose provisional safeguard duty**
- (1) After the Minister has initiated a safeguard investigation under **section 7(1)**, the Minister may impose a provisional safeguard duty on imported goods if the Minister is satisfied that there are reasonable grounds to believe that— 25
- (a) a delay in imposing a duty would cause damage that would be difficult to repair; and 30
 - (b) increased imports are causing serious injury or a threat of serious injury.
- (2) The Minister must notify the decision to impose a provisional safeguard duty.
- (3) A decision to impose a provisional safeguard duty— 35
- (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

- (b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

- 14 Duration of provisional safeguard duty** 5
- (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
- (b) a specified working day after the day referred to in **paragraph (a)**. 10
- (2) Provisional safeguard duty is due and payable on the demand of the Customs on goods imported until the earliest of—
- (a) the date of the notification of the decision to impose a safeguard measure; or 15
- (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)**.
- 15 Termination or reduction of provisional safeguard duty** 20
- (1) The Minister may terminate or reduce, with effect from the next working day, a provisional safeguard duty at the Minister's discretion.
- (2) The Minister must notify the decision to terminate or reduce a provisional safeguard duty. 25
- 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 satisfied that there is a good reason for doing so, require the Customs to remit the amount of the difference to the importers who paid the provisional safeguard duty: 30
- (b) if the rate of the relevant duty is greater than the rate of the provisional safeguard duty, the importers who paid 35

the provisional safeguard duty need not pay any more duty in relation to those imported goods.

- (2) If no relevant duty is imposed on imported goods on which provisional safeguard duty was paid, the Minister may require the Customs to remit the amount of the provisional safeguard duty to the importers who paid the provisional safeguard duty. 5
- (3) In this section, **relevant safeguard measure** means a safeguard measure referred to in **section 17(a) or (b)**.

Safeguard measure

- 17 Safeguard measure** 10
- A **safeguard measure** is any of the following imposed on or in relation to imported goods:
- (a) a safeguard duty;
- (b) a duty, or a variation of any rate of duty, or an exemption from any duty under the Tariff Act 1988: 15
- (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 safeguard measure** 20
- (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—
- (a) increased imports have caused serious injury or a threat of serious injury; and 25
- (b) the increased imports were due to unforeseen developments; and
- (c) the safeguard measure is necessary—
- (i) to prevent or remedy serious injury; and 30
- (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 35

- (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.
- (2) The actions the Minister may take are to— 5
- (a) impose a safeguard duty; or
- (b) recommend that the Governor-General make an Order in Council imposing a safeguard measure referred to in **section 17(b) or (c)**; or
- (c) impose a safeguard measure referred to in **section 17(d)**. 10
- (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 15
- (b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (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. 20
- (5) An exemption under **subsection (4)** is not a regulation within the meaning of the Regulations (Disallowance) Act 1989. 25
- (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. 30
- Compare: 1987 No 88 s 7

19 Duration of safeguard measure

- (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 35
- (b) a specified working day after the day referred to in **paragraph (a)**.

- (2) Safeguard duty is due and payable on the demand of the Customs on goods imported until the earliest of—
- (a) 4 years after the date of the notification of the decision to impose any provisional safeguard duty on that particular type of goods; or 5
 - (b) 4 years from the date the duty is due and payable under **subsection (1)**; or
 - (c) the date the safeguard duty is terminated under **section 25(1)**.
- (3) An extended safeguard duty is an exception to **subsection 10 (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 15
 - (b) a specified working day after the day referred to in **paragraph (a)**.
- (5) A safeguard measure imposed by the Minister under **section 18(2)(c)** must end with effect from the earliest of—
- (a) 4 years after the date of the notification of the decision to impose any provisional safeguard duty on that particular type of goods; or 20
 - (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)**. 25
- (6) A safeguard measure extended under **section 22(2)(c)** is an exception to **subsection (5)(a) and (b)**.

Safeguard review

- 20 Initiation of safeguard review** 30
- (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**. 35
- (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: 10
- (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 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 an extended safeguard duty; 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; or 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.
- (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. 30
- (5) An exemption under **subsection (4)** is not a regulation within the meaning of the Regulations (Disallowance) Act 1989. 35
- (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.

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— 5
- (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)**.
- (2) Extended safeguard duty is due and payable on the demand of the Customs on goods imported until the earliest of— 10
- (a) 8 years after the date of the notification of the decision to impose any provisional safeguard duty on that particular type of goods; or
 - (b) 8 years from the date the duty is due and payable under **section 19(1)**; or 15
 - (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— 20
- (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 extended by the Minister under **section 22(2)(c)** must end with effect from the earliest of— 25
- (a) 8 years after the date of the notification of the decision to impose any provisional safeguard duty on that particular type of goods; or
 - (b) 8 years from the date the safeguard measure comes into effect under **section 19(4)**; or 30
 - (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 Minister may—
- (a) terminate or reduce, with effect from the next working day, 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 of a safeguard measure referred to in **section 17(b) or (c)** (including if it has been extended under **section 22(2)**).
- (2) The Minister must notify the decision to terminate or reduce a safeguard measure. 15

Part 2**Miscellaneous matters**

- 26 Temporary Safeguard Authority abolished with no compensation for loss of office** 20
- (1) Except as necessary for the purposes of **section 27**, all Temporary Safeguard Authorities appointed under the Temporary Safeguard Authorities Act 1987 are abolished.
- (2) No member of a Temporary Safeguard Authority is entitled to compensation for loss of office. 25
- 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: 30
- (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** 5
- (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**.” 10
- (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**”. 15
- (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** 20
- (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. 25
- 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**”. 30

31 Repeal

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