Reprint
as at 12 November 2014

Temporary Safeguard Authorities Act 1987

Public Act	1987 No 88
Date of assent	13 June 1987
Commencement	13 June 1987

Temporary Safeguard Authorities Act 1987: repealed, on 12 November 2014, by section 32 of the Trade (Safeguard Measures) Act 2014 (2014 No 66).

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Note
Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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

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

directly competitive goods, in relation to any goods, means goods that, as a matter of fact and commercial common sense, are substitutable for imported goods

duty has the same meaning as in section 2 of the Tariff Act 1988

industry, in relation to any goods, means—

(a) the New Zealand producers of like goods and directly competitive goods; or

(b) such New Zealand producers of like goods and directly competitive goods whose collective output constitutes a major proportion of the New Zealand production of those goods

like goods, in relation to any goods, means—

(a) other goods that are like those goods in all respects; or

(b) in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods

Minister means the Minister of Commerce

rate of duty has the same meaning as in section 2 of the Tariff Act 1988

serious injury means significant overall impairment to the economic viability of a domestic industry

tariff has the same meaning as in section 2 of the Tariff Act 1988

working day means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January falls on a Friday, the following Monday; and

(d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and

(e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday

WTO Agreement means the Agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

Section 2: substituted, on 1 January 1995, by section 2 of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 2 **working day** paragraph (d): replaced, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 2 **working day** paragraph (e): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

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 inability to perform the functions of the office, 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 Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person being an Authority or a member of an Authority.

(5) The Ministry of Economic Development 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.

Section 3(2): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 3(4): amended, on 1 April 1988, by section 88(2) of the State Sector Act 1988 (1988 No 20).

Section 3(5): amended, on 7 September 2000, by section 8(1) of the Ministry of Economic Development Act 2000 (2000 No 28).

Section 3(5): amended, on 1 December 1988, by section 4(1) of the Trade and Industry Act Repeal Act 1988 (1988 No 156).

4 Authority to have certain powers of commission of inquiry

For the purposes of an inquiry pursuant to section 5(1), 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 serious injury to an industry, 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 serious injury as a result of the importation of the goods having regard to the matters set out in section 6; 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) 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), 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).

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

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

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

(i) the person who submitted the information; or

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

(iii) any person to whom the information relates; or

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

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

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

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

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

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

Section 5(1): amended, on 1 January 1995, by section 3(1)(a) of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 5(1): amended, on 1 January 1995, by section 3(1)(b) of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 5(1)(a): amended, on 1 January 1995, by section 3(1)(a) of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 5(6): added, on 1 January 1995, by section 3(2) of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 5(7): added, on 1 January 1995, by section 3(2) of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 5(8): added, on 1 January 1995, by section 3(2) of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

6 Matters to be evaluated and taken into account by Authority

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

(a) the rate and amount of the increase in the volume and value of imports of the goods, in absolute and relative terms:

(b) the economic impact of the increased importation of the goods on the industry, including actual and potential decline in output, sales, market share, profits, productivity, employment, and utilisation of production capacity:

(c) factors other than the imports which have injured, or are injuring, the industry:

(d) the nature and extent of importations of the goods, including the value, quantity, frequency, and purpose of the importation, by New Zealand producers of like or directly competitive goods.

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

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

Section 6: substituted, on 1 January 1995, by section 4 of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

7 Report by Authority

(1) An Authority which undertakes an inquiry under section 5 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), that—

(a) the importation of the goods is causing or will cause serious injury to the industry; and

(b) that serious injury is not attributable to factors other than the importation of the goods; and

(c) it is not practicable for the industry to reduce the injury resulting from the importation by other measures of adjustment to such extent that urgent action would be unnecessary.

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

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

(b) the restriction of the importation of the goods under the Customs and Excise Act 1996 or the Imports and Exports (Restrictions) Act 1988:

(c) any other action it considers appropriate.

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

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

Section 7: substituted, on 1 January 1995, by section 5 of the Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130).

Section 7(3)(b): substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 7(3)(b): amended, on 8 July 2003, by section 11 of the Imports and Exports (Restrictions) Amendment Act 2003 (2003 No 36).

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

Amendment(s) incorporated in the Act(s).

12 Repeals and savings

(1) The enactments set out in the Schedule 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), 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) had not been enacted.

Schedule

s 12(1)

Enactments repealed

Industries Development Commission Act 1961 (1961 No 123) (Reprinted 1975, Vol 3, p 2039)

Industries Development Commission Amendment Act 1964 (1964 No 113) (Reprinted 1975, Vol 3, p 2054)

Industries Development Commission Amendment Act 1965 (1965 No 31) (Reprinted 1975, Vol 3, p 2054)

Industries Development Commission Amendment Act 1967 (1967 No 52) (Reprinted 1975, Vol 3, p 2055)

Industries Development Commission Amendment Act 1970 (1970 No 37) (Reprinted 1975, Vol 3, p 2056)

Industries Development Commission Amendment Act 1971 (1971 No 136) (Reprinted 1975, Vol 3, p 2056)

Industries Development Commission Amendment Act 1975 (1975 No 33) (Reprinted 1975, Vol 3, p 2057)

Industries Development Commission Amendment Act 1979 (1979 No 55)

Industries Development Commission Amendment Act 1982 (1982 No 80)

Reprints notes

1 General

This is a reprint of the Temporary Safeguard Authorities Act 1987 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Trade (Safeguard Measures) Act 2014 (2014 No 66): section 32

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Imports and Exports (Restrictions) Amendment Act 2003 (2003 No 36): section 11

Human Rights Amendment Act 2001 (2001 No 96): section 70(1)

Ministry of Economic Development Act 2000 (2000 No 28): section 8(1)

Customs and Excise Act 1996 (1996 No 27): section 289(1)

Temporary Safeguard Authorities Amendment Act 1994 (1994 No 130)

Trade and Industry Act Repeal Act 1988 (1988 No 156): section 4(1)

State Sector Act 1988 (1988 No 20): section 88(2)

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