



Tariff Amendment Act 2009

Public Act 2009 No 62
Date of assent 7 December 2009
Commencement see section 2

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act amended	2
<i>Incorporation of provisions contained in, or prepared under, international trade agreements by reference in Tariff Amendment Orders</i>	
4 New sections 7C to 7H inserted into Tariff Act 1988	3
7C Incorporation of provisions by reference in regulations	3
7D Effect of amendments to, or replacement of, provisions incorporated by reference	3
7E Proof of provisions incorporated by reference	3
7F Access to provisions incorporated by reference	4
7G Acts and Regulations Publication Act 1989 not applicable to provisions incorporated by reference	4
7H Application of Regulations (Disallowance) Act 1989 to provisions incorporated by reference	5
5 Application of Tariff	5
<i>Working Tariff Document replaces Schedule 1</i>	
6 Interpretation	5
7 New section 9A inserted	6
9A Certification of 2010 Tariff Document	6
8 New sections 9B to 9G inserted	6

	9B	Access to Tariff	6
	9C	Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989	7
	9D	Judicial notice of Tariff	8
	9E	Evidence of Tariff	8
	9F	Tariff may be amended, and must be interpreted, as if it were an enactment	8
	9G	References to Schedule 1	8
9		Schedule 1 consequentially repealed	9
3		The Tariff	9
		Schedule	11
		Consequential amendments to other enactments relating to Working Tariff replacing Schedule 1 of Tariff Act 1988	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Tariff Amendment Act 2009.

2 Commencement

- (1) Sections 6(1), 8, and 9, and the Schedule come into force on 1 January 2010.
- (2) Sections 4 and 5 come into force—
 - (a) on the day after the date on which this Act receives the Royal assent if the Tariff (AANZFTA) Amendment Act 2009 is in force on that day; or
 - (b) if the Tariff (AANZFTA) Amendment Act 2009 is not in force on that day, then immediately after the commencement of that Act.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Tariff Act 1988.

Incorporation of provisions contained in, or prepared under, international trade agreements by reference in Tariff Amendment Orders

4 New sections 7C to 7H inserted into Tariff Act 1988

The following sections are inserted after section 7B:

“7C Incorporation of provisions by reference in regulations

“(1) An Order in Council made under section 9 or 10 may incorporate by reference any provisions set out in—

“(a) an international trade agreement to which New Zealand is a party (for example, a free trade agreement); or

“(b) another document made to give effect to such an agreement.

“(2) The provisions may be incorporated in the Order in Council—

“(a) in whole or in part; and

“(b) with modifications, additions, or variations specified in the regulations.

“(3) The incorporated provisions—

“(a) are the provisions as they exist at the time that the Order in Council is made; and

“(b) form part of the Order in Council for all purposes and have legal effect accordingly.

“7D Effect of amendments to, or replacement of, provisions incorporated by reference

An amendment to, or replacement of, provisions incorporated under section 7C has legal effect as part of the Order in Council only if an Order in Council is made that states that the particular amendment or replacement has that effect.

“7E Proof of provisions incorporated by reference

“(1) A copy of the provisions incorporated under section 7C, including any amendment to, or replacement of, the provisions, must be—

“(a) certified as a correct copy of the provisions by the chief executive; and

“(b) retained by the chief executive.

“(2) The production in proceedings of a certified copy of the provisions is, in the absence of proof to the contrary, sufficient

evidence of the incorporation in the Order in Council of the provisions.

“7F Access to provisions incorporated by reference

“(1) The chief executive must—

“(a) ensure that copies of any provisions incorporated under section 7C are available for inspection during working hours, free of charge, at places specified in a notice given under paragraph (d); and

“(b) ensure that copies of the provisions are published on an Internet site that is, so far as practicable, publicly available free of charge; and

“(c) ensure that copies of the provisions are available for purchase at a reasonable price at places specified in a notice given under paragraph (d); and

“(d) give notice in the *Gazette* stating that—

“(i) the provisions are incorporated in a particular Order in Council and the date on which the Order in Council was made; and

“(ii) copies of the provisions are available (at all reasonable times) for inspection during working hours, free of charge, at specified places; and

“(iii) copies of the provisions are available on a specified Internet site; and

“(iv) copies of the provisions can be purchased at specified places.

“(2) A failure to comply with this section does not invalidate an Order in Council that incorporates provisions under section 7C.

“7G Acts and Regulations Publication Act 1989 not applicable to provisions incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to provisions incorporated under section 7C or to an amendment to, or replacement of, those provisions.

“7H Application of Regulations (Disallowance) Act 1989 to provisions incorporated by reference

- “(1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires provisions incorporated under section 7C to be laid before the House of Representatives.
- “(2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made by subsection (1) of this section, applies to an Order in Council that incorporates provisions under section 7C.”

5 Application of Tariff

Section 7(1) is consequentially amended by adding the following paragraph:

- “(c) specified in an agreement or document incorporated into an Order in Council in reliance on section 7C by reference to the preferential abbreviation or to the preferential country.”

Working Tariff Document replaces Schedule 1

6 Interpretation

- (1) The definition of **Tariff** in section 2(1) is repealed and the following definition substituted:

“Tariff—

- “(a) means the Tariff of New Zealand as set out in the 2010 Tariff Document; but
- “(b) if, and in so far as, the Tariff referred to in paragraph (a) is on or after 1 January 2010 from time to time amended, modified, or revoked and replaced, then despite paragraph (a) means that Tariff as from time to time amended, modified, or revoked and replaced”.

- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“2010 Tariff Document means the document certified under section 9A(1)

“Working Tariff Document means the document maintained under that name by the person holding office under the State Sector Act 1988 as the Chief Executive of the New Zealand Customs Service”.

7 New section 9A inserted

The following section is inserted after section 9:

“9A Certification of 2010 Tariff Document

- “(1) The chief executive must, by the close of 31 December 2009,—
- “(a) certify a copy of the Working Tariff Document; and
 - “(b) retain that copy.
- “(2) Before certifying a copy of the Working Tariff Document under subsection (1), the chief executive must be satisfied that the copy is or includes a full and accurate copy of the contents of Schedule 1—
- “(a) as in force at the close of 31 December 2009; but
 - “(b) as amended by any order made under section 9 and that comes into force on 1 January 2010, and also as amended by section 10 of the Tariff (AANZFTA) Amendment Act 2009 (which also comes into force on 1 January 2010).
- “(3) The chief executive must ensure that—
- “(a) references in the certified copy to Schedule 3 of the Customs and Excise Act 1996 are replaced with references to the Excise and Excise-equivalent Duties Table; and
 - “(b) the certified copy indicates clearly that any information in it that is not the contents of Schedule 1 as described in paragraphs (a) and (b) of subsection (2) does not form part of, or have legal effect as part of, the Tariff (as defined after 31 December 2009).”

8 New sections 9B to 9G inserted

The following sections are inserted after section 9A:

“9B Access to Tariff

- “(1) The chief executive must—
- “(a) ensure that copies of the documents referred to in subsection (2) are published on an Internet site that is, so far as practicable, publicly available free of charge; and
 - “(b) ensure that copies of the documents referred to in subsection (2) are available for purchase at a reasonable price at the places designated under section 9 of the Acts and Regulations Publication Act 1989.
- “(2) The documents are—

- “(a) the Tariff as from time to time amended, modified, or revoked and replaced on or after 1 January 2010; and
- “(b) the 2010 Tariff Document; and
- “(c) Orders in Council amending or modifying the Tariff and made under section 9 or 10 on or after 1 January 2010.
- “(3) Every version of the Tariff referred to in subsection (2)(a) and published or made available under subsection (1) must—
- “(a) indicate that it is the Tariff as in force at the beginning of a stated date; and
- “(b) list all Acts and Orders in Council that are enacted on or after 1 January 2010 and before the stated date and that amend, modify, revoke, or revoke and replace some or all of the Tariff.
- “(4) Nothing in section 9A or this section prevents the chief executive from ensuring that other information is published or made available with the Tariff, so long as in doing so the chief executive ensures that it is indicated clearly that the other information does not form part of, or have legal effect as part of, the Tariff.

Example

Examples of other information are—

- the Excise and Excise-equivalent Duties Table (as that term is defined in the Customs and Excise Act 1996);
 - details of prohibited imports;
 - tables explaining the correlation between former and current Tariff items.
-

“9C Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989

Orders in Council amending or modifying the Tariff made under section 9 or 10 on or after 1 January 2010—

- “(a) are regulations 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 they are made; but
- “(b) are not regulations for the purposes of the Acts and Regulations Publication Act 1989.

“9D Judicial notice of Tariff

Judicial notice must be taken by all courts and persons acting judicially of the Tariff.

“Compare: 1989 No 142 ss 16A, 16B(1)

“9E Evidence of Tariff

Every copy of the documents referred to in section 9B(2) purporting to be published or made available under the authority of the chief executive is, unless the contrary is shown, deemed—

“(a) to be a correct copy of the document; and

“(b) to have been so published or made available.

“Compare: 1989 No 142 s 16C

“9F Tariff may be amended, and must be interpreted, as if it were an enactment

“(1) The Tariff may be amended, revoked, or revoked and replaced by an Act of Parliament as if it were an Act of Parliament.

“(2) The Tariff may be altered or amended by an Order in Council made under section 9 or 10 as if it were a regulation.

“(3) The Interpretation Act 1999 applies to the Tariff as if it were an enactment.

“(4) Nothing in this Act limits or affects the application of—

“(a) the Acts and Regulations Publication Act 1989 and the Interpretation Act 1999 to an Act amending, revoking, or revoking and replacing the Tariff, this Act (either alone or with other enactments), or both; or

“(b) the Interpretation Act 1999 to an Order in Council made under section 9 or 10.

“9G References to Schedule 1

Every reference in the following to the Tariff or to Schedule 1 of the Tariff Act 1988 must be read as if it were a reference to the Tariff (as defined by section 2 of the Tariff Act 1988 as amended by section 6(1) of the Tariff Amendment Act 2009):

“(a) an enactment not added, amended, inserted, or substituted by the Tariff Amendment Act 2009 and in force at the commencement of this section:

“(b) a document in operation at that commencement.

9 Schedule 1 consequentially repealed

- (1) Schedule 1 is consequentially repealed.
- (2) Section 3 is consequentially repealed and the following section substituted:

“3 The Tariff

- “(1) Duties must be levied, collected, and paid in accordance with the Tariff, or with a transitional safeguard measure or a provisional transitional safeguard measure, as the case may require, on goods to which this subsection applies.
- “(2) Subsection (1) applies to goods that, after the commencement on 1 December 1988 of this Act, are—
 - “(a) imported into New Zealand; or
 - “(b) entered therein for home consumption; or
 - “(c) entered therein for delivery to a manufacturing area.
- “(3) Subsection (1) is subject to the provisions of this Act.”
- (3) If this section commences before the commencement of the Tariff (AANZFTA) Amendment Act 2009 (the **AANZFTA Act**),—
 - (a) section 7(3) of the principal Act (as to be substituted by section 6 of the AANZFTA Act) is amended by omitting “Schedule 1” in each place where it appears and substituting in each case “the Tariff”; and
 - (b) section 10(1) and (2) of the AANZFTA Act (which amend Schedule 1) are amended by omitting “Schedule 1” and substituting “the Tariff”; and
 - (c) section 10(3) of the AANZFTA Act (which amends Schedule 1) is amended by omitting “Schedule 1” and substituting “The Tariff”.
- (4) If section 6 of the AANZFTA Act commences on 1 January 2010, section 7(3) of the principal Act (as to be substituted by section 6 of the AANZFTA Act) is amended immediately after its commencement by omitting “Schedule 1” in each place where it appears and substituting in each case “the Tariff”.
- (5) If this section commences after the commencement of the AANZFTA Act, section 7(3) of the principal Act (as substituted by section 6 of the AANZFTA Act) is amended by omitting “Schedule 1” wherever it appears and substituting in each case “the Tariff”.

- (6) The enactments specified in the Schedule are consequentially amended in the manner indicated in that schedule.
-

Schedule

s 9(6)

Consequential amendments to other enactments relating to Working Tariff replacing Schedule 1 of Tariff Act 1988**Customs and Excise Act 1996 (1996 No 27)**

Section 119(1)(a): repeal and substitute:

“(a) the Tariff classification of those goods under Part 1 of the Tariff.”

Section 119(1)(d): repeal and substitute:

“(d) whether or not those goods are subject to a specified duty concession under Part 2 of the Tariff referred to in the application.”

Section 122(1)(a): repeal and substitute:

“(a) have a particular Tariff classification under Part 1 of the Tariff; or”.

Section 122(1)(d): repeal and substitute:

“(d) are or are not, as the case may be, subject to a specified duty concession under Part 2 of the Tariff.”

Section 128(10): repeal and substitute:

“(10) Where the goods referred to in subsection (1) and entered pursuant to section 39 become free of duty or subject to a lower rate of duty under Part 1 or Part 2 of the Tariff after the entry is made, then the penalty must be calculated according to subsection (2)(a) as if the duty liability had not so changed.”

Heading above section 308: repeal.

Section 308: repeal.

Section 309: repeal.

Schedules 9 and 10: repeal.

Finance Act (No 2) 1993 (1993 No 83)

Repeal.

Finance Act (No 2) 1995 (1995 No 63)

Repeal.

Goods and Services Tax Act 1985 (1985 No 141)

Section 12(4)(e): repeal and substitute:

- “(e) reference numbers 40, 45, 70, 75, 80, 81, and 82 of Part 2 of the Tariff (as defined in section 2(1) of the Tariff Act 1988) if—
- “(i) the goods are entitled to be entered under any of these reference numbers; or
- “(ii) the goods are entitled to be entered duty free under Part 1 of the Tariff (as so defined), but would have been entitled to be entered under any of these reference numbers if the goods had been dutiable under Part 1 of the Tariff (as so defined).”

Legislative history

24 November 2009

Divided from Border (Customs, Excise, and Tariff) Processing Bill (Bill 83–2) by committee of the whole House, third reading

7 December 2009

Royal assent

This Act is administered by the Ministry of Economic Development.
