



## ANALYSIS

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**An Act to amend the Customs Tariff Act 2012.**

(6 December 2012)

**The Parliament of the Cook Islands enacts as follows—****1 Title**

This Act is the Customs Tariff Amendment Act 2012.

**2 Commencement**

This Act is deemed to have come into force on 1 August 2012.

**3 Principal Act amended**

This Act amends the Customs Tariff Act 2012.

**4 Interpretation**

(1) Section 2 of the principal Act is amended by deleting the definition of Normal Tariff and replacing it with the following—

“**Normal Tariff** means the rates of duty and the exemptions from duty specified in the column headed “Normal Tariff” or “Import Duty” in the Tariff and includes any modification or amendment of the Normal Tariff made after the commencement of this Act.”

- (2) Section 2 of the principal Act is amended by deleting the definition of Preferential Tariff and replacing it with the following—

“**Preferential Tariff** means the rates of duty and the exemptions from duty specified in the column headed “Preferential Tariff” or “Preferential Rates” in the Tariff; and includes any modification or amendment of the Preferential Tariff made after the commencement of this Act:”

**5 New Section 6A inserted**

The following section is inserted after section 6—

“**6A Application of Tariff**

- “(1) The Tariff applies to goods in a Tariff item that are the product or manufacture of a preferential country at the rate—

“(a) specified after the preferential abbreviation (if any) in the column of the Tariff headed Preferential Tariff; or

“(b) specified in some other way (for example, in a footnote or other indicator) in the Tariff by reference to the preferential country or the preferential abbreviation.

“(c) specified in an agreement or document incorporated into an Order in Executive Council in reliance on section 10 by reference to the preferential abbreviation or to the preferential country.

- “(2) The liability to duty of any goods that are the produce or manufacture of a country must, for the purposes of this section, be determined according to the status of that country at the time when the goods are imported into Cook Islands.

- “(3) In this section, unless the context otherwise requires,—

**preferential abbreviation**, in relation to a preferential country listed or described in the first column of note 3 of the Tariff, means the abbreviation specified opposite that country in the second column of that note:

**preferential country** means a country listed or described in the first column of note 3 of the Tariff.”

**6 New Section 20A inserted**

The following section is inserted after section 20—

“**20A Interpretation**

In this section and sections 21 to 22E, unless the context otherwise requires,—

**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:

**free trade agreement** means—

the PICTA:

**industry**, in relation to any goods, means—

“(a) the Cook Islands producers, as a whole, of like or directly competitive goods; or

“(b) the Cook Islands producers of like or directly competitive goods whose collective output constitutes a major proportion of the total 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 that have characteristics closely resembling those goods:

**provisional transitional safeguard measure** means a provisional transitional safeguard measure applied under section 22E:

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

**transitional safeguard measure** means a transitional safeguard measure applied under section 15F.”

**7 New section 22A inserted**

The following sections are inserted after section 22—

**“22A Matters to be taken into account by Comptroller**

When the Comptroller is investigating, for the purposes of section 21, whether the importation of goods subject to tariff reduction or removal is causing or threatens to cause serious injury to an industry, he or she must evaluate the following matter—

“(a) the rate and amount of the increase in the volume of imports of the goods, in absolute terms and relative to domestic production; and

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

“(c) factors other than the imports that have injured, or are injuring, the industry; and

“(d) any other factors considered relevant to Cook Island’s international obligations.”

**8 New section 22B inserted**

The following sections are inserted after section 22A—

**“22B Publication of investigation results**

“(1) As soon as practicable after completing an investigation under section 21, the Comptroller must publish, in accordance with subsection (2), a report setting out the findings and conclusions of the investigation.

“(2) The Comptroller must—

“(a) make copies of the report available, free of charge, on the Internet; and

“(b) give a public notice stating that the report is available on the Internet, free of charge, and the website address.”

**9 New section 22C inserted**

The following sections are inserted after section 22B—

**“22C Application of transitional safeguard measure**

“(1) The Minister may decide to apply a transitional safeguard measure if he or she makes a determination, as a result of the investigation by the Comptroller under section 21, that goods—

“(a) are being imported in increased quantities (in absolute terms or relative to domestic production); and

“(b) are causing, or threatening to cause, serious injury to an industry producing a like or directly competitive good.

- “(2) A transitional safeguard measure applies on and from—
  - “(a) the date specified in the measure (which may be a date before, on, or after the date on which the determination is made); or
  - “(b) if no date is specified in the measure, the date on which the determination is made under subsection (1).
- “(3) A transitional safeguard measure expires—
  - “(a) on the date specified in the measure; or
  - “(b) at an earlier date (if any) specified by the Minister by public notice.
- “(4) The Minister must ensure that—
  - “(a) any transitional safeguard measure is applied only to the extent necessary to prevent or remedy serious injury and facilitate adjustment; and
  - “(b) the nature, rate, extent, and duration of the transitional safeguard measure is consistent with Cook Island’s international obligations as a party to the relevant free trade agreement; and
  - “(c) any transitional safeguard measure is consistent with the provisions of the relevant free trade agreement; and
  - “(d) any transitional safeguard measure is not inconsistent with Cook Island’s other international obligations.
- “(5) The Minister’s decision to apply a transitional safeguard measure must be published as soon as practicable by public notice.
- “(6) A transitional safeguard measure, in the form of a duty, applied under subsection (5) is due and payable on the demand of the Customs on and from the date on which the measure applies under subsection (2).”

**10 New section 22D inserted**

The following sections are inserted after section 22C—

**“22D Extension of transitional safeguard measure**

“The Minister may extend a transitional safeguard measure applied under section 22C if the extension is—

- “(a) consistent with the provisions of the relevant free trade agreement; and
- “(b) not inconsistent with Cook Island’s other international obligations.”

**11 New section 22E inserted**

The following sections are inserted after section 22D—

**“22E Provisional transitional safeguard measure**

“(1) Following the initiation of an investigation under section 21, the Minister may make a determination that there are grounds for applying a provisional transitional safeguard measure if he or she is satisfied that—

- “(a) goods that have been subject to tariff reduction or removal after the entry into force of the relevant free trade agreement—
  - “(i) are being imported in increased quantities (in absolute terms or relative to domestic production); and

- “(i) are causing, or threatening to cause, serious injury to an industry producing a like or directly competitive good; and
- “(b) there exist,—
  - “(i) in relation to a provisional transitional safeguard measure to be applied under the PICTA, critical circumstances; and
  - “(c) the delay in applying a transitional safeguard measure under section 22C would cause serious injury to the industry which would be difficult to repair.
- “(2) A provisional transitional safeguard measure applies on and from—
  - “(a) the date specified in the measure (which may be a date before, on, or after the date on which the determination is made); or
  - “(b) if no date is specified in the measure, the date on which the determination is made under subsection (1).
- “(3) After making a determination under subsection (1), the Minister may apply a provisional transitional safeguard measure.
- “(4) The Minister must ensure that—
  - “(a) any provisional transitional safeguard measure is applied only to the extent necessary to prevent or remedy serious injury and facilitate adjustment; and
  - “(b) the nature, rate, extent, and duration of the provisional transitional safeguard measure is consistent with Cook Island’s international obligations as a party to the relevant free trade agreement; and
  - “(c) any provisional transitional safeguard measure is consistent with the provisions of the relevant free trade agreement; and
  - “(d) any provisional transitional safeguard measure is not inconsistent with Cook Island’s other international obligations.
- “(5) The Minister’s decision to apply a provisional transitional safeguard measure must be published as soon as practicable by public notice.
- “(6) A provisional transitional safeguard measure, in the form of a duty, applied under subsection (3)—
  - “(a) is due and payable on the demand of the Customs on and from the date on which the measure applies under subsection (2);
  - “(b) must be refunded by the Customs in the circumstances specified in subsection (7).
- “(7) The circumstances referred to in subsection (6)(b) are—
  - “(a) if an investigation under section 21 concludes that no serious injury has been caused to an industry; or
  - “(b) in any other case, to the extent (if any) that the Minister requires the duty to be refunded.”

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This Act is administered by the Revenue Management Division of the  
Ministry of Finance and Economic Management.

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