Customs Legislation (Anti-Dumping Amendments) Bill 1988

Date Introduced: 28 April 1988
House: House of Representatives
Presented by: Hon. B.O. Jones, MP

Digest of Bill

Purpose
The Bill will provide for applications for an anti-dumping notice and the making of preliminary findings on such applications.

Background
Dumping occurs when the products of one country are exported to another country at less than their 'normal value'. Dumping is condemned internationally as unfair trading if the dumped goods cause injury to domestic producers. Anti-dumping duty – equal to the difference between the export price and the normal value – may be levied on such imports.

The Customs Tariff (Anti-Dumping) Act 1975 provides authority for anti-dumping action to be taken to prevent material injury to an Australian industry caused by the unfair trading practice of dumping.

The concepts behind the Act have widespread and long standing international endorsement since anti-dumping actions are intended to ensure 'fair' trade. However tests for dumping vary in complex ways at different times and places. In practice, anti-dumping actions may hinder beneficial international commercial competition and become significant protectionist devices.

The General Agreement on Tariffs and Trade (GATT) in Article VI condemns dumping and permits the application of anti-dumping duties when dumped goods cause material injury to domestic producers. Such action is not compulsory. Article VI limits the action which may be taken by countries against unfair trading practices.
In practice, the concepts involved in determining 'normal value' and 'material injury' are extremely imprecise and have changed significantly over the years. 'Normal value' was originally defined so as to prevent firms from selling goods in foreign markets at prices below those prevailing in their home market. A significant change to this definition occurred in the 1974 amendments to the USA's Tariff Act. Sales below cost in the domestic market over an extended period were no longer regarded as an acceptable basis for normal values. As a result of informal discussions in 1977/78 between authorities administering anti-dumping legislation in Australia, Canada, the USA and European Communities, the thrust of the US approach was adopted by the other authorities. Where such sales below cost were rejected, 'Normal value' was defined as 'prices which recovered full cost including a reasonable profit'. Such a change was formally introduced into the Australian legislation in 1984 (Section 5(a)), through this basically only formalised then existing ACS practice.

Australia makes greater use of anti-dumping action than do other comparable countries. Extensive use of anti-dumping action has the potential to frustrate the achievement of other Government objectives in the industry, trade, competition and economic policy areas.

It is normally in the importing country's overall economic interest to take the external trading environment as given and accept cheap imports, even if they are dumped. Generally, the true injured party as a result of continued dumping is the exporting country.

One option could be to accept that dumping and subsidisation are part of the world economic environment within which competitive Australian industries must survive, in the same way that export industries must adjust to the existence of other countries barriers to trade.

Yet the basic principle behind Australia's anti-dumping policies – the notion that international trade should be conducted fairly – commands extensive support. The existence of, and commitment to, a speedy and readily available anti-dumping system has been an important element in the Government's industry policy and underpins the Accord on the need for change towards a less assisted, more outward-looking, restructured industry.

Professor F. Gruen was commissioned in 1985 by the Government to review the operation and administration of the Customs Tariff (Anti-Dumping) Act 1975 to determine whether improvements could be made and if so, to recommend appropriate changes.
Gruen’s report, an economist’s perspective, expressed concern at the potential damage to Australia’s industrial structure by the denial to consumers and using industries of lowest cost supplies through anti-dumping measures. He stressed the dangers of anti-dumping measures becoming clumsy and ineffective substitutes for long term assistance and that the anti-dumping system should not be used to shield import competing industry from the necessity to adjust to changing longer term economic conditions.

Despite those concerns, Gruen acceded to the extensive condemnation of unfair trade practices by supporting the construction of an Australian anti-dumping mechanism. Gruen recommended that the present system be continued and proposed some substantial changes. These included amending the Act to clarify its meaning and to ensure more speedy, effective and transparent application of measures designed to promote fair trade. The report recommended that wherever possible a market-determined price should be used to establish a normal value rather than a cost plus approach. The report also proposed more rigorous guidelines for applying the injury test in anti-dumping cases and recommended that anti-dumping action not be allowed to remain in place beyond two years without reference to the Industries Assistance Commission (IAC).

References


Dept Industry and Commerce. Review of Australia’s Anti-dumping and countervailing legislation. Discussion paper. AGPS June 83


Main Provisions

Clause 6 will insert a number of new sections into the Customs Act 1901 (the principal Act).

Proposed section 269T contains interpretation provisions. Interested party in relation to an application under proposed section 269TB (see below) is defined to be the applicant, a person representing the industry involved, anyone concerned with the importation or export of those goods, or the Government of a country that is likely to export like goods to Australia.
Proposed section 269TA will allow the Minister to give directions to the Comptroller. The directions are not to be related to specific consignments but are to deal with general principles that are to be followed when exercising the powers contained in the proposed sections.

Proposed section 269TB deals with applications under the Customs Tariff (Anti-Dumping) Act 1975. People may make applications if a number of criteria are satisfied. Where a consignment of goods has been imported, is likely to be imported or consists of like goods to a consignment that has or is likely to be imported, a person may make an application if there is, or may be established, an Australian industry producing those goods and the person believes that there are reasonable grounds for the publication of an anti-dumping notice. A foreign government may make an application if similar import criteria are met, there is a producer of like goods in that country that exports to Australia and the government of that country believes that there are reasonable grounds for the publication of a notice.

Consideration of such an application is dealt with in proposed section 269TC. The Comptroller is, within 70 days, to reject applications unless satisfied that there is, or is likely to be established, an Australian industry for those goods and that the matters contained in the application would, if substantiated, constitute reasonable grounds for the publication of a notice. Where an application is not rejected, a notice is to be published in the Gazette setting out particulars of the matter and stating that a preliminary finding will be made within a specified period.

After receiving submissions, the Comptroller is to make a preliminary finding. If it is found that a notice should be published, the matter is to be referred to the Anti-Dumping Authority (proposed section 269TD).

Proposed section 269TF provides for the Anti-Dumping Authority to review decisions made under proposed sections 269TC and 269TD.

For further information, if required, contact the Economics and Commerce Group.

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