Industries Assistance Commission Amendment Bill 1988

Date Introduced: 20 April 1988
House: House of Representatives
Presented by: The Hon. Peter Morris, M.P., Minister Representing the Treasurer

Digest of Bill

Purpose

To enable changes in the rate of tariff assistance without a prior report of the Industries Assistance Commission (IAC) in certain, narrowly defined circumstances.

Background

The Australian tariff arrangements are based on the Customs Tariff Act 1987, which sets out the rate of duty to be applied to goods imported into Australia. In administering the tariff, a uniform and systematic classification of tradeable goods is used to assist commerce by providing a 'customs' terminology. It is based on an international convention, the Customs Co-operation Council Nomenclature (CCCN), to which Australia is a signatory.

Because of the legislative basis to the tariff system, any changes to tariffs require an amendment to the Customs Tariff Act 1987. When Parliament is sitting, changes to the tariff are introduced by Customs Tariff Proposals, debate on which is usually deferred until the proposals are introduced as a Bill. When Parliament is not sitting, the intention to introduce a Customs Tariff Proposal is notified in the Commonwealth of Australia Gazette and the proposal is then introduced in the Parliament within seven sitting days. The proposal has effect from the date specified in the Gazette notice.

However, section 23(3) of the Industries Assistance Commission Act 1973 requires the Minister to have received an appropriate IAC report in the year prior to taking action on the particular industries assistance matter. This suggests that Ministerial introduction of tariff amendments by a Customs Tariff Proposal or Gazette notice without an IAC report may not be legal. This view received support following a review of tariff classification amendment procedures by the Department of Industry, Technology and Commerce in May 1985.
Regarding the question of legality, DITAC received advice from the Attorney-Generals Department to the effect that many tariff amendments it had reviewed were not made strictly in accordance with the *Industries Assistance Commission Act* 1973. However, there is no doubt as to their validity now as all were subsequently approved by the Parliament. It should be noted that while that Act restrains Ministerial action, it does not restrict in any way the Parliament's prerogative to amend the *Customs Tariff Act* 1987.

In these circumstances, the use by the Government of Customs Tariff Proposals and Gazette notification to give immediate effect to Government decisions appears questionable although the subsequent 'retrospective' legislation that amends the *Customs Tariff Act* 1987 is legal. Notwithstanding this, it has been long standing practice to introduce certain tariff changes by either Customs Tariff Proposals or Gazette notice in circumstances other than in the course of initially implementing a Government decision on an IAC report.

**Main Provisions**

Clause 2 will amend section 23 of the *Industries Assistance Act* 1973 to allow for changes to the rate of tariff without an IAC report in the previous year in a number of circumstances. Such changes are not to be made without the approval of the Minister administering the Principal Act.

The first amendment will allow such changes where they are necessary to correct anomalies, errors or ambiguities in the *Customs Tariff Act* 1987. Secondly, such changes may be made where they are necessary to correct an error that occurred in the implementation of a decision. Thirdly, such changes may be made to implement action that has been authorised to occur if pre-determined conditions arise. The fourth situation where such changes may occur is to maintain the level of assistance previously applying where a decision by a tribunal or a court has had the effect of altering the rate at which duty on imported goods is collected.

The Bill will also clarify the Principal Act to make it clear that a reference to a multilateral treaty includes a reference to the CCCN. As the power already exists to alter rates of tariff to keep in line with multilateral treaties, this will make it clear that rates may be changed without an IAC report where the change results from a change in the CCCN.

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

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