CUSTOMS AMENDMENT BILL 1983

Date Introduced: 11 May 1983
House: House of Representatives
Presented by: Hon. J.J. Brown, M.P., Minister assisting the Minister for Industry and Commerce

Short Digest of Bill

Purpose

To replace the existing Commercial By-Law System of concessional importation with a Commercial Tariff Concession System, through amendments to the Customs Act 1901.

Background

The Commercial By-Law System reflects the purpose of the Australian customs tariff to protect Australian production of certain goods. The system permits concessional duty rates where it can be shown that there is no Australian production to be protected by imposition of the normal duty rate.

Extensive investigations by the Industries Assistance Commission led to a report entitled "The Commercial By-Law System" (Report No.305, 2 July 1982), a review of the present system.

Sections 271 and 273(1) of the Customs Act 1901 which give the Minister power to make by-laws and determinations applicable to specified goods but not to particular persons form the legislative basis for the Commercial By-Law System. Retrospective effect is permitted, provided no increased duty is imposed on goods already imported (section 273C).

By-laws are permitted under section 271 in respect of goods specified in the Customs Tariff to be liable to duty "as prescribed by by-law". The Commercial By-Law System permits customs duties, other than revenue duties, to be rendered inoperative where there is no Australian production and the protective effect is therefore nil.
The criterion for the exemption, set out in item 19 of Schedule 2 of the Customs Tariff Act 1966 and discussed by the IAC, is now set out in item 19 of Schedule 4 to the Customs Tariff Act 1982. It requires, for admission free or subject only to the 2 per cent revenue duty, that a "suitably equivalent" good of Australian manufacture is not "reasonably available". The "suitably equivalent, reasonably available" criterion is the most frequent ground for by-law admission, although by-laws may be made under other items of the schedule, or the main schedule (Schedule 3), of the Customs Tariff, which in some items specifies rates applying to "goods as prescribed by by-law".

All by-laws are published in the Gazette. An administrative distinction then arises between those by-laws of general application published as Consolidated By-Law References (CBRs) and the so-called "ad hoc" by-laws made for a particular importer for a limited period (usually 2 years) and not included in the CBRs publication. CBRs account for 80 per cent of the value of imports, but form only 20 per cent of the total number of by-laws (6300 CBRs vs. 25000 ad hoc by-laws) (IAC report, p.87).

The IAC discussed at some length the criteria for by-law entry, including the terms "suitably equivalent" and "reasonably available". The former term raises issues of substitutability between imports and locally produced goods; the latter term may be used for concessional entry of imports to satisfy consumer demand which temporarily exceeds Australian productive capacity.

The commercial by-law system has existed since Federation, and limits protection where Australian industry would not benefit. In respect of goods such as machine tools, necessarily imported, Australian industrial development has been thereby enhanced. The by-law system is generally favoured by industry (IAC report, p.116). Such administrative problems as exist derive from the scale of the system, now extending concessions estimated at $600 million annually.

The IAC recommended that ad hoc by-laws be phased out and converted to CBRs. Other recommendations included that the concessional rate be "free", avoiding the 20 per cent revenue duty, and that revocation of a by-law should be timed to permit goods in transit to Australia concessional entry.

The IAC's recommended criterion for by-law admission replaces "suitable equivalence" with a functional requirement that goods "serve similar functions". "Reasonable availability" would be replaced by "produced in
Australia", appropriately defined, and shortfall in Australian productive capacity would be removed as a ground for by-law entry (IAC report, p.122).

Outline

The Bill would insert a new Part XVA in the Customs Act 1901 (new sections 269B to 269S). The provisions are collateral to existing provisions for Ministerial determinations and by-laws, and establish the Commercial Tariff Concession Orders scheme.

Main Provisions

Clause 3's textual amendment to section 151 is to be deemed to apply from 1 January 1983. Clause 4's removal of a safeguard against stockpiling imports for customs entry during the following customs year, is to be deemed to apply from 14 May 1983, since the fears motivating the provision have proved groundless.

Part XVA - Commercial Tariff Concession Orders - would commence on a date fixed by Proclamation. Section 269C requires the Minister to make a Commercial Tariff Concession Order, following application, if goods "serving similar functions" to the imported goods in question are not produced or producible in the normal course of business in Australia.

The Bill is notable for the provisions relating to publication. Applications under section 269G, or recommendations from the Industries Assistance Commission or Temporary Assistance Authority deemed under section 269J to be applications, are to be notified in the Gazette (section 269L). The outcome of the application is also to be published (sections 269K, 269M), whether or not the Minister makes a commercial tariff concession order under section 269C. That power is subject to limitations, such as that it may not contravene Australia's obligations under an international agreement (section 269F). A more general discretion for the Minister to refuse an order on grounds of national interest, or substantial adverse effect on markets for Australian goods, is conferred by clause 269E.

The IAC report, while recommending a functional approach (p.122) elaborated on the characterization of goods. All goods are competitive to some extent. The IAC considered, for example, that all foodstuffs perform a similar function (p.125). Section 269D permits regulations to specify such prescribed classes of goods which are to be not eligible for tariff concession orders.
The criterion for similarity is further refined in that goods may not be "similar" if there is not "significant cross-elasticity of demand". This economic measure determines complementarity or substitutability of goods through the responsiveness of demand for one good to changes in the price of others.

Section 269S permits ministerial determinations to establish the method for calculating production costs, in assessing whether goods may be taken to have been produced in Australia.

Amendments to section 273GA in clause 6 permit review by the Administrative Appeals Tribunal, limited to decisions as to the date of commencement of an order under subsection 269N(4).

Section 269N permits retrospective operation of the concession order.

For further information, if required, contact:

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