CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1981

Date Introduced: 6 May 1981
House: House of Representatives
Presented by: Hon. J.C. Moore, M.P., Minister for Business and Consumer Affairs

Short Digest of Bill

Purpose

To incorporate the General Agreement of Tariffs and Trade (GATT) Anti-Dumping, and Subsidies and Countervailing Measures Codes into the Customs Tariff (Anti-Dumping) Act 1975.

Background

Dumping is the sale of a product on a foreign market at a price below that at which it is being sold on the domestic market. Anti-dumping and countervailing measures taken by Australia are in accordance with GATT codes to which Australia is a signatory. At the so-called Tokyo round of multilateral trade negotiations, revisions to the dumping and countervailing measures codes were negotiated including criteria for determining whether and the extent to which duties can be imposed. This Bill gives effect to those revisions. (Note: anti-dumping duties are those imposed on dumped goods, whereas countervailing duties are those imposed on subsidised exports).

Main Provisions

Clause 1 gives the short title.

Clause 2 omits the definition of export price, and substitutes and defines the terms 'determination' and 'direction'. It also extends the meaning of the term 'business associates' to include anyone who meets the criteria set out in paragraph (b). Paragraph (c) provides that where goods originating in a country pass through a second country before reaching Australia, their passing through the second country will be disregarded.
Clause 3

Clause 3 defines 'export price' according to two different circumstances, depending on whether there is a business association between the exporter and importer of the goods. Proposed section 4A, sub-section (1), paragraph (a) defines the export price when the exporter and importer are not business associates. Proposed section 4A, sub-section (1), paragraph (b) defines the export price where an exporter sells to an importer — who is a business associate of the exporter — and who in turn sells the goods to a third party who is not a business associate of the importer. In other words, this establishes the third party as not being a business associate of the exporter. In the first case, the export price is that paid by the importer (normally the invoice price). In the second case, the export price is that paid by the third party to the importer less the "prescribed deductions" (see below). Proposed section 4A, sub-section (2) defines the prescribed deductions referred to in paragraph (1)(b) above. Sub-sections (3) and (4) of proposed section 4A give the Minister power to determine export prices when there is inadequate information and to disregard unreliable information when determining those prices.

Clause 4

This clause deals with the 'normal' value of goods defined in sub-section (1) of section 5 of the Principal Act.

Paragraphs (a), (d) and (e) of clause 4 appear to be designed to remedy deficiencies in the existing criteria for determining normal values.

Paragraph (c) provides that in assessing normal values, the Minister may disregard any information he considers to be unreliable.

New sub-section 5(2) defines the criteria for determining the normal value of goods when there are no sales, or what sales there are, are not suitable for determining export prices. The purpose of this provision is to determine normal values of goods exported from centrally-planned economies (see Explanatory Memorandum).

New sub-section 5(3) defines the criteria for determining normal values where the Minister is not satisfied that other criteria for determining normal values
are appropriate, and where the goods are exported from a country whose Government significantly influences their prices.

Clause 5

Clause 5 deals with dumping duties.

Paragraph (a) provides that the bases for imposing dumping duties are material injury to domestic industry, or the material hindering of the establishment of domestic industry.

Paragraph (b) provides that the Minister may cease anti-dumping measures if an exporter undertakes to cease injuring domestic industry by raising export prices to 'non-injurious' levels.

Paragraphs (c), (d) and (e) contain drafting amendments and delete the existing provision whereby goods may be exempted from dumping duty if a dumping margin not exceeding 10% is evident.

Clause 6

Clause 6 deals with third country dumping duties. The proposed provisions are explained adequately in the Explanatory Memorandum.

Clause 7

Clause 7 deals with countervailing duties on subsidised exports.

Paragraph (a) provides for drafting changes.

Paragraph (b) is designed to ensure that the bases for imposing countervailing duties are injury to, or hindered establishment of, domestic industry.

Paragraph (c) provides that, where the Minister is considering imposing countervailing duties, he may cease such action on the basis of undertakings, made by the Government or exporter of the country of origin to make any changes to avoid the injuring or hindering establishment of a domestic industry, to review any financial assistance to the export of those goods in the case of that Government, and not to continue injurious actions in the future in the case of exporters. Financial assistance covers subsidies, bounties, freight reductions or remissions, and 'other' financial assistance.
Clause 8

Clause 8 deals with third country countervailing duties. The provisions of this clause are explained adequately in the Explanatory Memorandum.

Clause 9

For the purpose of imposing countervailing duties, the Minister is empowered to ascertain the value of financial assistance (subsidisation) to exports. Clause 9 recognises that the criteria used for determining such assistance may not be appropriate where the Government in the country of origin of the goods produces the goods under monopoly (or near monopoly) situations, or significantly influences the prices of those goods. In such cases, clause 9 empowers the Minister to ascertain the normal value of the goods in accordance with proposed sub-section 5(3) (see clause 4 above). According to the Explanatory Memorandum, this clause is directed at goods originating in the centrally-planned economies.

Clause 10

This clause deals with less than normal freight. One way exports are subsidised is by reductions or remissions of freight. To impose countervailing duties it is necessary to estimate the value of such freight concessions, the difference between normal and actual freight changes. Clause 10 provides for the inclusion of inland as well as overseas freight in determining what normal freight is so that the extent of concessions can be determined.

Clause 11

Proposed sub-section 13(5) enables the Minister to take retrospective countervailing action in circumstances similar to those enabling anti-dumping action.

Proposed sub-sections 13(6) and (7) enable the Minister to take retrospective countervailing and anti-dumping action where exporters or Governments have violated undertakings referred to in clauses 5 and 7. They also provide that retrospective action cannot extend further back than the dates when the undertakings were violated.

Clause 12

Where a person has requested the Minister not to impose anti-dumping duties and the Minister has refused to do so, clause 12 enables the Minister to send a reference on
the matter to the Industries Assistance commission following a request from that person.

Clause 13

This clause makes formal amendments to the Principal Act as set out in the Schedule thereto.

Clause 14

Clause 14 ensures that a notice made under the Principal Act, remains in force as if it had been made under the Principal Act as amended by this Bill.

For further information, if required, contact:

 Finance, Industries, Trade & Development Group
 LEGISLATIVE RESEARCH SERVICE

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