FOREIGN ANTITRUST JUDGMENTS (RESTRICTION OF ENFORCEMENT) BILL 1979

Date Introduced: 21 February 1979
House: Senate
Presented by: Senator the Honourable P. Durack, Attorney-General

Short Digest of Bill

Purpose

To restrict the recognition and enforcement in Australia of certain foreign judgments obtained in antitrust proceedings.

Background

In 1976 the Westinghouse Electric Corporation commenced proceedings in the U.S. courts against 29 domestic and foreign uranium producers (including 4 Australian corporations) alleging price-fixing agreements contrary to the U.S. antitrust laws. Westinghouse claimed damages which could amount to $7 billion. In an attempt to protect the Australian companies from the reach of the U.S. antitrust laws in this action, the Australian Government enacted the Foreign Proceedings (Prohibition of Certain Evidence) Act 1976 in November 1976. This Act prevented Australian-based evidence from being used in foreign legal proceedings to which there was objection from an Australian point of view (e.g. protecting the national interest). The Act has proved, however, to be inadequate to exempt the Australian companies from the U.S. laws. In the proceedings 9 non-U.S. defendants (including the 4 Australian companies) declined to enter appearances because of jurisdictional objections and the U.S. Court has entered default judgment against them. The amount of the judgment has yet to be determined. The Government has introduced the Foreign Antitrust Judgments (Restriction of Enforcement) Bill 1979 to ensure this judgment and certain other foreign judgments will not be enforceable in Australia.

Main Provisions

Proposed sub-section 3(2) provides that the Attorney-General may make an order in writing, declaring that an antitrust judgment of a foreign court shall not be recognized or enforceable in Australia. The Attorney-General may alternatively, where a judgment is for a
specified amount of money, reduce the amount for the purposes of recognition or enforcement in Australia (para. 3(2)(d)). In making an order, the Attorney-General must be satisfied that the court exercised jurisdiction inconsistent with international law or comity or that it is desirable to protect the national interest (para. 3(2)(b)).

Proposed sub-section 3(1) contains definitions of "antitrust law" and "foreign court".

An order made by the Attorney-General may be disallowed by either House of Parliament in the same way as for Regulations (sub-section 3(5) and (6)).