



Customs Tariff (Anti-Dumping) Amendment Act 1981

No. 66 of 1981

An Act to amend the *Customs Tariff (Anti-Dumping)* *Act 1975*

[Assented to 12 June 1981]

[Date of commencement 10 July 1981]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Customs Tariff (Anti-Dumping) Amendment Act 1981*.

(2) The *Customs Tariff (Anti-Dumping) Act 1975*¹ is in this Act referred to as the Principal Act.

Interpretation

2. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “export price” and substituting the following definitions:

“ ‘determination’ means a determination in writing;

“ ‘direction’ means a direction in writing;”;

- (b) by omitting sub-section (3) and substituting the following sub-section:

“(3) For the purposes of this Act, 2 persons who are not business associates within the ordinary meaning of that term shall, nevertheless, be deemed to be business associates if, directly or indirectly—

- (a) one has an interest in the business or property of the other;
- (b) both have an interest in the same business or property; or
- (c) another person has an interest in the business or property of each of them.”; and

- (c) by adding at the end thereof the following sub-section:

“(5) For the purposes of this Act, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.”.

3. After section 4 of the Principal Act the following section is inserted:

Export price

“4A. (1) For the purposes of this Act, the export price of any goods exported to Australia is—

- (a) where—

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- (ii) the importer and the exporter are not business associates,

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation;

- (b) where—

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation);
- (ii) the importer and the exporter are business associates; and
- (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not a business associate of the importer,

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

- (c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

“(2) A reference in paragraph (1) (b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to—

- (a) any duties of Customs or sales tax paid or payable on the goods;
- (b) any costs, charges or expenses arising in relation to the goods after exportation; and
- (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1) (b), is to be regarded as the rate of profit on the sale by the importer.

“(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding sub-sections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

“(4) For the purposes of sub-section (3), the Minister may disregard any information that he considers to be unreliable.”.

Normal value of goods

4. Section 5 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “in the ordinary course of trade” after “sold” (first occurring);
- (b) by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) Subject to this section, where the Minister is satisfied that—

- (a) by reason of the absence of sales that would be relevant for the purpose of determining a price under sub-section (1); or
- (b) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under sub-section (1) are not suitable for use in determining such a price,

the normal value of goods exported to Australia cannot be ascertained under sub-section (1), the normal value of the goods for the purposes of this Act is—

(c) except where paragraph (d) applies, the sum of—

- (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—

(A) such amounts as the Minister determines would be the delivery charges and other costs necessarily incurred in that sale; and

- (B) an amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale; or
- (d) where the Minister so directs, the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to a third country.

“(3) Subject to sub-sections (4) and (5), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding sub-sections by reason that the Government of the country of export—

- (a) has a monopoly, or substantial monopoly, of the trade of the country; or
- (b) determines or substantially influences the domestic price of goods in that country,

the normal value of the goods for the purposes of this Act shall be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

- (c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;
- (d) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for export from that country to another country in the ordinary course of trade, being sales that are arms length transactions;
- (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
 - (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
 - (ii) such amounts as the Minister determines are the delivery charges and other costs necessarily incurred in selling the like goods;
 - (iii) an amount calculated in accordance with such rate as the Minister determines is to be regarded as the rate of profit on the sale of the like goods;
- (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.”;

- (c) by inserting after sub-section (4) the following sub-section:
“(4A) For the purposes of sub-section (4), the Minister may disregard any information that he considers to be unreliable.”;
- (d) by omitting sub-section (6); and
- (e) by omitting from paragraph (7) (b) “export were the country of origin” and substituting “origin were the country of export”.

Dumping duties

5. Section 8 of the Principal Act is amended—

- (a) by omitting sub-paragraph (1) (b) (i) and substituting the following sub-paragraph:
“(i) material injury to an Australian industry has been or is being caused or is threatened or the establishment of an Australian industry has been or may be materially hindered; or”;
- (b) by inserting after sub-section (2) the following sub-section:
“(2A) Where the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may suspend indefinitely his consideration of the export of that consignment if he is given and accepts an undertaking by the exporter, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.”;
- (c) by inserting in sub-section (6) “on or” before “after”;
- (d) by omitting paragraph (7) (b); and
- (e) by omitting from sub-section (8) “(b),”.

Third country dumping duties

6. Section 9 of the Principal Act is amended—

- (a) by inserting in sub-paragraph (1) (b) (i) “or is threatened” after “caused”;
- (b) by inserting in paragraph (2) (b) “material” before “injury”;
- (c) by omitting from sub-section (7) “writing under his hand” and substituting “notice in writing”;
- (d) by adding at the end of paragraph (7) (a) “or”;
- (e) by omitting paragraph (7) (b); and
- (f) by omitting from sub-section (8) “or (b)”.

Countervailing duties

7. Section 10 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “in the country of origin or the country of export of the goods,” before “there”;
- (b) by omitting sub-paragraph (1) (b) (i) and substituting the following paragraph:

“(i) material injury to an Australian industry has been or is being caused or is threatened or the establishment of an Australian industry has been or may be materially hindered; or”;

- (c) by inserting after sub-section (2) the following sub-section:

“(2A) Where the export of a consignment of goods to Australia has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may suspend indefinitely his consideration of the export of that consignment if he is given and accepts—

- (a) an undertaking by the Government of the country of origin, or of the country of export, of the goods in the consignment, in terms that are satisfactory to the Minister, that that Government will, in relation to any future export trade to Australia in goods of the same kind as the goods in the consignment, review any financial assistance by that Government and make any changes that may be found to be necessary to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry; or
- (b) an undertaking by the exporter of the goods in the consignment, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.”.

Third country countervailing duties

8. Section 11 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “in the country of origin or the country of export of the goods,” before “there”;
- (b) by inserting in sub-paragraph (1) (b) (i) “or is being threatened” after “caused”;
- (c) by inserting in sub-section (1) “, if requested by the Government of the third country so to do,” after “Minister” (second occurring);
- (d) by inserting in paragraph (2) (b) “material” before “injury”;

- (e) by inserting in sub-section (2) “, if requested by the Government of the third country so to do,” after “Minister” (second occurring);
- (f) by omitting from sub-section (8) “writing under his hand” and substituting “notice in writing”.

9. After section 11 of the Principal Act the following section is inserted:

Amount of subsidy may be determined by Minister for purposes of section 10 or 11

“11A. Where the Minister is satisfied that it is inappropriate to ascertain the amount of a subsidy, bounty, reduction or remission of freight or other financial assistance referred to in sub-section 10 (1) or (2) or 11 (1) or (2) except in accordance with this section by reason that the Government of the country of export—

- (a) has a monopoly, or substantial monopoly, of the trade of the country; or
- (b) determines or substantially influences the domestic price of goods in that country,

the Minister may, for the purposes of section 10 or 11, as the case may be, determine the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance, as the case may be, on the basis that the normal value of the goods is such value as is ascertained in accordance with sub-section 5 (3).”.

Freight less than normal freight

10. Section 12 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “from the country of export to Australia” and substituting “, whether within the country of export for the purpose of exporting the goods to Australia or from the country of export to Australia or both,”; and
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) In this section, ‘normal freight’, in relation to goods exported to Australia, means—

 - (a) the amount of freight that would have been payable in respect of the carriage of the goods within the country of export for the purpose of exporting the goods from that country to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the time of that carriage, in respect of the carriage of like goods, and to any other matter that the Minister considers relevant;
 - (b) the amount of freight that would have been payable in respect of the carriage of the goods from the country of export to Australia if the rate of freight applicable to that carriage were a

rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the date of exportation of the goods, in respect of the carriage of like goods by sea or, if like goods are regularly carried by aircraft, by aircraft, and to any other matter that the Minister considers relevant; or

- (c) the sum of the amount of freight referred to in paragraph (a) and the amount of freight referred to in paragraph (b),

as the case may be.”.

Retrospective notices

11. Section 13 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(5) Sub-section (1) does not prevent the publication of a notice under sub-section 10 (1) in respect of goods that have been entered for home consumption if—

- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 of the Customs Act in respect of any duty that might be payable on goods of the same kind under section 10 of this Act or, within that period, the Customs had the right to require and take such security; and
- (b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason that, in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods a subsidy, bounty, reduction or remission of freight or other financial assistance (including financial assistance of the kind referred to in sub-section 10 (10)).

“(6) Where—

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with sub-section 8 (2A) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 8 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 8 (1) in respect of goods that—

- (c) have been exported by the exporter;
- (d) are of the kind to which the undertaking relates; and

- (e) have been entered for home consumption on a day that—
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

“(7) Where—

- (a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with sub-section 10 (2A) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 10 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 10 (1) in respect of goods that—

- (c) are the produce or manufacture of that country or have been exported from that country, as the case may be;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that—
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

“(8) Where—

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with sub-section 10 (2A) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 10 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 10 (1) in respect of goods that—

- (c) have been exported by the exporter;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that—
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.”.

Reference to Industries Assistance Commission of matters relating to anti-dumping duties

12. Section 15 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) Where—

- (a) a person engaged in, or concerned in the establishment of, an Australian industry or engaged, or proposing to engage, in the business of importing into Australia goods of a particular kind requests the Minister to revoke a notice in force under sub-section 8 (1), 8 (2), 9 (1), 9 (2), 10 (1), 10 (2), 11 (1) or 11 (2), being a notice relating to goods of a kind with which persons engaged in that industry are concerned or relating to goods of the kind imported, or proposed to be imported, by the person, as the case may be; and
- (b) the Minister informs the person, in writing, that he does not propose to accede to the request,

the person may, not later than 30 days after being so informed, request the Minister, in writing, to refer to the Commission for inquiry and report the question as to the existence of a fact or facts specified in the request, being a fact or facts as to the existence of which, if the notice were not in force, the Minister would be required to be satisfied before causing the notice to be published.”.

Formal amendments

13. The Principal Act is amended as set out in the Schedule.

Instrument not affected by amendments

14. The amendments made by this Act do not affect an instrument in force under the Principal Act immediately before the commencement of this Act and such an instrument continues in force after the commencement of this Act as if it had been made under the Principal Act as amended by this Act.

Customs Tariff (Anti-Dumping) Amendment No. 66, 1981

SCHEDULE

Section 13

Provision	Amendment
Section 6	Omit " <i>Customs Act 1901-1974</i> ", substitute " <i>Customs Act 1901</i> "
Sub-paragraph 8 (7) (c) (i)	Omit " <i>Customs Tariff 1965-1974</i> ", substitute " <i>Customs Tariff Act 1966</i> "
Sub-paragraph 10 (8) (b) (i)	Omit " <i>Customs Tariff 1965-1974</i> ", substitute " <i>Customs Tariff Act 1966</i> "

NOTE

1. No. 76, 1975.