



Customs Tariff (Anti-Dumping) Amendment Act 1984

No. 1 of 1984

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

[Assented to 14 March 1984]

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 1984*.

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

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (b) “a business associate” (wherever occurring) and substituting “an associate”;

- (b) by inserting in paragraph (2) (c) “in the opinion of the Minister,” before “the buyer” (first occurring);
- (c) by omitting from paragraph (2) (c) “a business associate” and substituting “an associate”; and
- (d) by omitting sub-section (3) and substituting the following sub-sections:

“(3) Without limiting the generality of sub-section (2), where—

- (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
- (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss,

the Minister may, for the purposes of paragraph (2) (c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

“(3A) In determining for the purposes of sub-section (3) whether goods are sold by an importer at a loss, the Minister shall have regard to—

- (a) the amount of the price paid or to be paid for the goods by the importer;
- (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods;
- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
- (d) such other matters as the Minister considers relevant.

“(3B) For the purposes of this Act, 2 persons shall be deemed to be associates of each other if, and only if—

- (a) both being natural persons—
 - (i) they are connected by a blood relationship or by marriage or by adoption; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate—
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
 - (ii) both of them together control, directly or indirectly, a third body corporate; or

- (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
- (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership.”.

Export price

4. Section 4A of the Principal Act is amended—

- (a) by omitting sub-paragraph (1) (a) (ii) and substituting the following sub-paragraph:

“(ii) the purchase of the goods by the importer was an arms length transaction,”;
- (b) by omitting sub-paragraph (1) (b) (ii) and substituting the following sub-paragraph:

“(ii) the purchase of the goods by the importer was not an arms length transaction; and”;
- (c) by omitting from sub-paragraph (1) (b) (iii) “a business associate” and substituting “an associate”; and
- (d) by adding at the end thereof the following sub-section:

“(5) Paragraphs (1) (a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.”.

Normal value of goods

5. Section 5 of the Principal Act is amended—

- (a) by omitting from sub-section (2) “is satisfied that”;
- (b) by omitting paragraphs (2) (a) and (b) and substituting the following paragraphs:

“(a) is satisfied that—

 - (i) by reason of the absence of sales that would be relevant for the purpose of determining a price under sub-section (1); or
 - (ii) 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); or

- “(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under sub-section (1),”;
- (c) by omitting from sub-section (2) “the normal value of goods exported to Australia cannot be ascertained under sub-section (1),”;
- (d) by omitting from paragraph (2) (d) “highest price” and substituting “price determined by the Minister to be representative of the price”;
- (e) by adding at the end of paragraph (2) (d) “, being sales that are arms length transactions”;
- (f) by inserting after sub-section (2) the following sub-section:

“(2A) Where the Minister gives a direction under paragraph (2) (d) in relation to the ascertainment of the normal value of goods for the purposes of this Act, the price determined by the Minister for the purposes of that paragraph—

- (a) shall be a price that, by reason of the quantity of goods, being like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and
- (b) may be the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions.”;
- (g) by omitting from paragraph (3) (a) “or” (last occurring) and substituting “and”;
- (h) by inserting in paragraph (3) (d) “determined by the Minister to be representative of the price” after “price”;
- (j) by inserting after sub-section (3) the following sub-section:

“(3A) Where the normal value of goods for the purposes of this Act is a value ascertained in accordance with paragraph (3) (d), the price determined by the Minister for the purposes of that paragraph—

- (a) shall be a price that, by reason of the quantity of goods, being like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and
- (b) may be the highest price paid for like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the

ordinary course of trade, being sales that are arms length transactions.”;

- (k) by inserting after sub-section (5) the following sub-section:

“(6) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2) (c) or (3) (e), the Minister shall make such adjustments, in determining the costs to be determined by him in pursuance of that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.”; and

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

“(9) Where the Minister is satisfied, in relation to goods exported to Australia, that—

- (a) the price paid for like goods—

- (i) sold for home consumption in the country of export in sales that are arms length transactions; or
- (ii) sold in the country of export for export to a third country in sales that are arms length transactions, is, and has been for an extended period of time and in respect of a substantial quantity of goods, less than the sum of—
- (iii) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- (iv) such other amounts as the Minister determines to be the costs necessarily incurred in the sale of the goods by the seller of the goods; and

- (b) it is likely that the seller of the goods referred to in paragraph (a) will not be able to fully recover the amounts referred to in sub-paragraphs (a) (iii) and (iv) within a reasonable period of time,

the price so paid for the goods referred to in paragraph (a) shall be taken not to have been paid in the ordinary course of trade.”.

6. After section 5 of the Principal Act the following section is inserted:

Material injury to industry

“5A. (1) In determining, for the purposes of section 8 or 10, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this sub-section referred to as the ‘country of export’), the Minister may, without limiting the generality of that section, have regard to—

- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export;

- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export;
- (c) any change or likely change, during a particular period, in the proportion that—
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia,bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia;
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export;
- (e) the difference between—
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia;
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia;
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
- (h) in a case where the determination is being made for the purposes of section 10 and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

“(2) In determining, for the purposes of section 9 or 11, whether material injury to a producer or manufacturer in a third country has been or is being caused or is threatened or would or might have been caused by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this sub-section referred to as the ‘country of export’), the Minister may, without limiting the generality of that section, have regard to—

- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export;

- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export;
- (c) any change, or likely change, during a particular period, in the proportion that—
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold or consumed in Australia,bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia;
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export;
- (e) the difference between—
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia;
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

“(3) A reference in sub-section (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to a producer or manufacturer in a third country, in relation to goods of a particular kind exported to Australia is a reference to—

- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (b) the degree of utilization of the capacity of the industry, producer or manufacturer to produce or manufacture goods of that kind, or like goods;
- (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer—
 - (i) for which there are sales or forward orders; or
 - (ii) which are held as stocks;

- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (e) the level of profits earned in the industry, or by the producer or manufacturer, that are attributable to the production or manufacture of goods of that kind, or like goods;
- (f) the level of return on investment in the industry or in the business of the producer or manufacturer;
- (g) cash flow in the industry or in the business of the producer or manufacturer;
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry or by the producer or manufacturer in relation to the production or manufacture of goods of that kind, or like goods;
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (k) the ability of persons engaged in the industry, or of the producer or manufacturer, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry or in the business of the producer or manufacturer.”.

Dumping duties

7. Section 8 of the Principal Act is amended—

- (a) by omitting sub-section (2A) and substituting 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—

- (a) give notice in writing to the exporter stating that—
 - (i) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with paragraph (b); and
 - (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
- (b) whether or not a notice has been given to the exporter in accordance with paragraph (a), 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.”;

- (b) by inserting after sub-section (5) the following sub-section:

“(5A) In exercising his powers under sub-section (5) in relation to dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of dumping duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph (1) (b) or (2) (b), as the case requires.”.

Third country dumping duties

8. Section 9 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

“(5A) In exercising his powers under sub-section (5) in relation to third country dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of third country dumping duty in respect of those goods is not greater than is necessary to prevent the injury, or a recurrence of the injury, referred to in paragraph (1) (b) or (2) (b), as the case requires.”.

Countervailing duties

9. Section 10 of the Principal Act is amended—

- (a) by omitting sub-section (2A) and substituting 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—

- (a) give notice in writing to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment stating that—
- (i) the Minister is of the opinion that it would be appropriate for the Government or exporter to whom the notice is given to give an undertaking in accordance with paragraph (b); and
 - (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
- (b) whether or not a notice has been given to the Government of the country of origin, or of the country of export, or to the exporter in accordance with paragraph (a), suspend

indefinitely his consideration of the export of that consignment if he is given and accepts—

- (i) 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
 - (ii) 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.”;
- (b) by inserting after sub-section (5) the following sub-section:
- “(5A) In exercising his powers under sub-section (5) in relation to countervailing duty in respect of goods to which this section applies by virtue of sub-section (1) or (2), the Minister shall have regard to the desirability of ensuring that the amount of countervailing duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph (1) (b) or (2) (b), as the case requires.”; and
- (c) by omitting sub-section (7) and substituting the following sub-section:
- “(7) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to be ascertained under the preceding sub-sections, that amount shall be such amount as is determined by the Minister having regard to all relevant information.”.

Third country countervailing duties

10. Section 11 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

“(5A) In exercising his powers under sub-section (5) in relation to third country countervailing duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of third country countervailing duty in respect of those goods is not greater than is necessary to prevent the injury, or a recurrence of the injury, referred to in paragraph (1) (b) or (2) (b), as the case requires.”.

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

11. Section 15 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) A request under paragraph (2) (a) or (3) (a) shall be in writing and shall be verified by statutory declaration or witnessed by a notary public exercising his function in a place outside the Commonwealth and the Territories.”.

NOTE

1. No. 76, 1975. For previous amendments, see No. 66, 1981; Nos. 53, 68, 114 and 136, 1982; and Nos. 20 and 91, 1983.