

NITROGENOUS FERTILIZERS SUBSIDY AMENDMENT ACT 1976

No. 20 of 1976

An Act to amend the *Nitrogenous Fertilizers Subsidy Act 1966-1974*.

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

1. (1) This Act may be cited as the *Nitrogenous Fertilizers Subsidy Amendment Act 1976*.¹ Short title and citation.

(2) The *Nitrogenous Fertilizers Subsidy Act 1966-1974*² is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Nitrogenous Fertilizers Subsidy Act 1966-1976*.

2. This Act shall come into operation on the day on which it receives the Royal Assent¹ but the amendment made by section 3 shall be deemed to have taken effect on 1 January 1976. Commencement.

3. Section 3 of the Principal Act is amended by omitting from sub-section (2) the figures “1975” and substituting the figures “1976”. Interpretation.

4. Section 6 of the Principal Act is repealed and the following section substituted:—

“6. (1) Subsidy is not payable under sub-section (2) or (2A) of section 5 in respect of the importation of goods referred to in paragraph (b) of sub-section (2), or in sub-section (2A), of that section, as the case may be, if the Minister is satisfied— Subsidy not payable in respect of certain imported goods.

- (a) that the amount of the export price of those goods is less than the amount of the normal value of those goods; or
- (b) that, by reason of any circumstance, including the granting of rebates, refunds or other allowances, those goods have been carried from the country of export to Australia freight free, or the amount of freight paid or payable in respect of the carriage of the goods is less than 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 similar goods by sea, and to any other matter that the Minister considers relevant.

“(2) In this section—

‘export price’, in relation to goods referred to in sub-section (1), means—

- (a) where the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer (whether before or after exportation) and the purchase is an arms length transaction—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 the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer (whether before or after exportation) and the purchase is not an arms length transaction, but the goods, in the condition in which they were exported, have been purchased from the importer by another person and the purchase by that other person is an arms length transaction—the price paid or payable for the goods by that person, or, if the Minister is satisfied that that price is lower than it would otherwise be by reason that the importer expects to receive a subsidy in respect of the goods under section 5, the price that the Minister is satisfied would have been charged to that person by the importer for the goods if the importer had not expected to receive such a subsidy, less—
 - (i) duties of Customs and sales tax paid or payable on the goods;
 - (ii) all costs, charges and expenses arising in relation to the goods after exportation; and
 - (iii) the profit (if any) on the sale to that person or, where the Minister so directs, the amount calculated in accordance with such rate as the Minister, having regard to all the circumstances of the sale, specifies, in writing, as the rate that, for the purposes of this section, is to be regarded as the rate of profit on the sale; or
- (c) in any other case—the price that the Minister, having regard to all the circumstances of the exportation, specifies, in writing, would have been payable for the goods by an importer if they had been purchased by him and the purchase had been an arms length transaction;

‘importer’, in relation to goods referred to in sub-section (1), means the beneficial owner of the goods at the time of their arrival within the limits of the port in Australia at which they are landed.

“(3) Subject to sub-sections (4) to (10) (inclusive), for the purposes of this section, the normal value of any goods referred to in sub-section (1) is the price paid for like goods sold for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

“(4) Subject to sub-sections (5) to (10) (inclusive), where, by reason of the absence of sales of like goods or otherwise, the normal value of any goods referred to in sub-section (1) cannot be ascertained under sub-section (3), the normal value of the goods, for the purposes of this section, is—

- (a) except where paragraph (b) applies, the sum of—
 - (i) the cost of production or manufacture of the goods in the country of export;
 - (ii) delivery charges in the country of export in relation to the goods;
 - (iii) other costs that would necessarily be incurred in selling the goods; and
 - (iv) such additional amount calculated in accordance with such rate as the Minister, having regard to all the circumstances of the sale, specifies, in writing, as the rate that, for the purposes of this section, is to be regarded as the rate of profit on the sale; or
- (b) 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.

“(5) Subject to sub-sections (6) and (7), where the Minister is satisfied that it is inappropriate, for the purposes of this section, to ascertain the normal value of goods referred to in sub-section (1) in accordance with sub-section (3) or (4) 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 section, is the price of like goods produced or manufactured, and sold in the ordinary course of trade, in another country specified by the Minister, being a country in which, in the opinion of the Minister, the costs of production or manufacture are similar to those in the country of export.

“(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods, for the purposes of this section, to be ascertained under sub-section (3), (4) or (5), the normal value of those goods, for the purposes

of this section, shall be such amount as is determined by the Minister having regard to all relevant information.

“(7) Where the normal value of goods referred to in sub-section (1), for the purposes of this section, is the price paid for like goods and that price and the export price of the goods exported—

- (a) relate to sales occurring at different times; or
- (b) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate,

that price paid for like goods is to be taken to be that price paid adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

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

“(9) Where—

- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
- (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this section as if the country of export were the country of origin,

he may direct that the normal value of the goods shall be so ascertained.

“(10) For the purposes of sub-section (9), the country of origin of goods is—

- (a) in the case of a manufactured nitrogenous substance not contained in a mixture—the country in which the last significant process in the manufacture of the goods was performed;
- (b) in the case of natural sodium nitrate not contained in a mixture—the country of which it is a product; or
- (c) in the case of a mixture containing a manufactured nitrogenous substance or natural sodium nitrate—the country in which the last significant process in the production of the mixture was performed.

“(11) For the purposes of this section, a purchase or sale of goods shall not be treated as an arms length transaction if—

- (a) there is any consideration payable for or in respect of the goods other than their price;
- (b) the price is influenced by a commercial or other relationship between the buyer, or a business associate of the buyer, and the seller, or a business associate of the seller; and
- (c) the buyer, or a business associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

“(12) For the purposes of sub-section (11), but without limiting the generality of that sub-section, two persons shall 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.

“(13) A reference in this section to the amount of the export price of goods, to the amount of the normal value of goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency ascertained in accordance with a fair rate of exchange at the appropriate date.”

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

Formal amendments.

SCHEDULE

Section 5

FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting the words “of this Act” and “of this section” (wherever occurring):—

Sections 3 (1) (definitions of “authorized person”, “registered premises” and “subsidy”), 5 (2B), 8, 11 (1) and 16 (3) and (7).

2. The Principal Act is further amended as set out in the following table:—

Provision	Amendment
Section 2	Omit “the seventeenth day of August, One thousand nine hundred and sixty-six”, substitute “17 August 1966”.
Section 10	Omit “Seventy-eight dollars seventy-four cents”, substitute “\$78.74”.
Section 14	Omit “of this Act” (first occurring).
Section 19	Omit “One hundred dollars”, substitute “\$100”.
Sub-section 20 (3)	Omit “of section 23 of this Act”, substitute “, of section 23”.
Sub-section 23 (1)	Omit “One hundred dollars”, substitute “\$100”.
Sub-section 23 (2)	Omit “One thousand dollars”, substitute “\$1,000”.
Paragraph 27 (c)	Omit “One hundred dollars”, substitute “\$100”.

NOTES

- 1. Act No. 20, 1976; assented to 12 April 1976.
- 2. Act No. 78, 1966, as amended by No. 79, 1969; No. 107, 1972; No. 216, 1973 (as amended by No. 20, 1974); and No. 78, 1974.