

Customs Tariff (Dumping and Subsidies)

No. 117 of 1965

An Act to amend the *Customs Tariff (Dumping and Subsidies) Act 1961*.

[Assented to 18 December, 1965]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Customs Tariff (Dumping and Subsidies) Act 1965*.

(2.) The *Customs Tariff (Dumping and Subsidies) Act 1961** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Customs Tariff (Dumping and Subsidies) Act 1961–1965*.

Commence-
ment.

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 sub-section (1.) the definition of “export price” and inserting in its stead the following definitions:—

“ ‘delivery charges in the country of export’, in relation to goods that have been exported to Australia, means charges or costs in respect of the handling (including the placing in outside packages), transporting or loading of the goods in the country of export with a view to exporting the goods from that country;

‘export price’, in relation to goods that have been exported to Australia, means an amount, expressed in Australian currency, equal to—

(a) where the goods have been sold by the exporter, on or before the date of exportation, to the person who imports them into Australia—the sum of—

(i) the price paid or to be paid for the goods by the importer, but not including

* Act No. 18 of 1961.

any part of that price that, in the opinion of the Minister, represents a charge in respect of transport or insurance of the goods after they have been exported or in respect of any other matter arising after that time, or represents a charge in respect of the cost of supplying outside packages for the goods; and

(ii) any delivery charges in the country of export that have been incurred by the importer in relation to the goods and are not included in that price; or

(b) in any other case—the amount that, in the opinion of the Minister, would have been the export price of the goods in accordance with the last preceding paragraph if the export of the goods to Australia had been the result of a sale of the goods by the exporter to a person in Australia;

‘exporter’, in relation to goods that have been exported to Australia, includes a person who placed the goods on board the ship, aircraft or vehicle in which the goods left the country of export ;”;

- (b) by omitting from the definition of “the normal value” in sub-section (1.) the words “or are being”;
- (c) by omitting from paragraph (a) of that definition the words “free on board charges paid or payable in that country in respect of the goods” and inserting in their stead the words “delivery charges in the country of export in relation to the goods”;
- (d) by omitting from paragraph (b) of that definition the words “free on board charges paid or payable in the country of export in respect of the goods” and inserting in their stead the words “delivery charges in the country of export in relation to the goods”;
- (e) by omitting from paragraph (c) of that definition the words “such amount as is estimated by the Minister to be the cost of placing the goods free on board in

the country of export ” and inserting in their stead the words “ delivery charges in the country of export in relation to the goods ”;

- (f) by omitting sub-paragraph (ii) of paragraph (d) of that definition and inserting in its stead the following sub-paragraph:—

“ (ii) delivery charges in the country of export in relation to the goods; and ”; and

- (g) by inserting after sub-section (1.) the following sub-sections:—

“ (1A.) Where the Minister is of opinion that there are reasonable grounds for believing that, in relation to any goods, the amount of the price referred to in sub-paragraph (i) of paragraph (a) of the definition of ‘ export price ’ in the last preceding sub-section, or the amount of any charge referred to in sub-paragraph (ii) of that paragraph, was fixed with a view to—

(a) avoiding the imposition on the goods or on other goods of a special duty under section seven or eight of this Act; or

(b) reducing the amount of such a special duty that is payable in respect of the goods or causing such a special duty not to be payable in respect of the goods,

the Minister may determine an amount to be the export price of the goods for the purposes of this Act, being the amount that, in the opinion of the Minister, would have been the export price of the goods in accordance with the definition of ‘ export price ’ in the last preceding sub-section if the fixing of the amount of that first-mentioned price or charge had not been affected by either of the considerations referred to in paragraphs (a) and (b) of this sub-section.

“ (1B.) In forming an opinion in relation to goods for the purposes of paragraph (b) of the definition of ‘ export price ’ in sub-section (1.) of this section or for the purposes of the last preceding sub-section, the Minister may have regard to any matter that he considers relevant and, in particular, may have regard to—

(a) any dealing in, or any action taken with a view to dealing in, the goods, whether before or after the importation of the goods into Australia;

(b) any use of the goods after importation into Australia and any value attributed to the goods in connexion with any such use; or

- (c) any dealing in, or any action taken with a view to dealing in, other goods in the production of which the first-mentioned goods have been used or in which the first-mentioned goods have been incorporated.”.

4.—(1.) Section 7 of the Principal Act is amended—

Dumping duty.

- (a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“ (1.) If the Minister, after inquiry and report by the Tariff Board, is satisfied, as to any goods, that—

- (a) the export price of any of those goods that have been exported to Australia is less than the normal value of the goods so exported; and

- (b) the exportation of those goods is causing or threatening injury to an Australian industry producing or manufacturing like or directly competitive goods or may hinder the establishment of an Australian industry in connexion with the production or manufacture of like or directly competitive goods,

the Minister may cause a notice to be published in the *Gazette* specifying the goods as to which he is so satisfied.”;

- (b) by omitting from paragraph (b) of sub-section (4.) the word “ or ” (last occurring);

- (c) by inserting after paragraph (b) of sub-section (4.) the following paragraphs:—

“ (ba) that—

- (i) the tariff classification in the First Schedule to the *Customs Tariff* 1965 that applies to the goods, or, where the goods are goods to which section twenty of that Act applies, the item in the Second Schedule to that Act that applies to the goods, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

- (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(bb) that the imposition of the dumping duty on the goods would be inconsistent with the obligations of the Commonwealth under any international agreement relating to tariffs or trade; or ”; and

(d) by omitting from sub-section (5.) the word and letter “ or (b) ” and inserting in their stead the letters and word “, (b) or (ba) ”.

(2.) A notice specifying any goods published in the *Gazette* before the commencement of this Act in accordance with sub-section (1.) of section 7 of the Principal Act and in force immediately before that commencement continues in force as if it were a notice under sub-section (1.) of section 7 of the Principal Act, as amended by this Act, duly specifying those goods, but may be amended or revoked as if it were such a notice.

Dumping
duty—third
country.

5.—(1.) Section 8 of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“ (1.) If the Minister is satisfied, as to any goods produced or manufactured in a particular country, that—

(a) the export price of any of those goods that have been exported to Australia is less than the normal value of the goods so exported; and

(b) the exportation of those goods is causing or threatening injury to the trade in the Australian market of producers or manufacturers in a third country of like or directly competitive goods,

the Minister may cause a notice to be published in the *Gazette* specifying the goods as to which he is so satisfied.”.

(2.) A notice specifying any goods published in the *Gazette* before the commencement of this Act in accordance with sub-section (1.) of section 8 of the Principal Act and in force immediately before that commencement continues in force as if it were a notice under sub-section (1.) of section 8 of the Principal Act, as amended by this Act, duly specifying those goods, but may be amended or revoked as if it were such a notice.

Countervailing
duty.

6.—(1.) Section 9 of the Principal Act is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“ (1.) If the Minister, after inquiry and report by the Tariff Board, is satisfied, as to any goods, that—

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of any of those

goods that have been exported to Australia, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

- (b) the exportation of those goods is causing or threatening injury to an Australian industry producing or manufacturing like or directly competitive goods or may hinder the establishment of an Australian industry in connexion with the production or manufacture of like or directly competitive goods,

the Minister may cause a notice to be published in the *Gazette* specifying the goods as to which he is so satisfied.”; and

- (b) by omitting from sub-section (3.) the words “ referred to in sub-section (1.) of this section ” and inserting in their stead the words “ that the Minister is satisfied has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods ”.

(2.) A notice specifying any goods published in the *Gazette* before the commencement of this Act in accordance with sub-section (1.) of section 9 of the Principal Act and in force immediately before that commencement continues in force as if it were a notice under sub-section (1.) of section 9 of the Principal Act, as amended by this Act, duly specifying those goods, but may be amended or revoked as if it were such a notice.

7.—(1.) Section 10 of the Principal Act is amended—

- (a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

Countervailing
duty—third
country.

“ (1.) If the Minister is satisfied, as to any goods produced or manufactured in a particular country, that—

- (a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of any of those goods that have been exported to Australia a subsidy, bounty, reduction or remission of freight or other financial assistance; and
- (b) the exportation of those goods is causing or threatening injury to the trade in the Australian market of producers or manufacturers in a third country of like or directly competitive goods,

the Minister may cause a notice to be published in the *Gazette* specifying the goods as to which he is so satisfied.”; and

- (b) by omitting from sub-section (3.) the words “referred to in sub-section (1.) of this section” and inserting in their stead the words “that the Minister is satisfied has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods”.

(2.) A notice specifying any goods published in the *Gazette* before the commencement of this Act in accordance with sub-section (1.) of section 10 of the Principal Act and in force immediately before that commencement continues in force as if it were a notice under sub-section (1.) of section 10 of the Principal Act, as amended by this Act, duly specifying those goods, but may be amended or revoked as if it were such a notice.

8. After section 10 of the Principal Act the following section is inserted:—

Freight less
than normal
freight.

“10A.—(1.) Where the Minister is satisfied that, by reason of any circumstance, including the granting of rebates, refunds or other allowances, goods exported to Australia have been carried from the country of export to Australia freight free, or the amount or the net amount of freight, expressed in Australian currency, paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods—

- (a) the Minister shall be deemed, for the purposes of sub-section (1.) of section nine, or sub-section (1.) of section ten, of this Act, to be satisfied that a reduction of freight has been granted upon the carriage of the goods; and
- (b) where a special duty under section nine or section ten of this Act is chargeable (whether by virtue of this section or otherwise) on goods as to which the Minister is so satisfied, the Minister shall be deemed, for the purposes of sub-section (3.) of section nine, or sub-section (3.) of section ten, of this Act, to be satisfied that the amount of the reduction of freight that has been granted upon the carriage of the goods is an amount equal to—
- (i) in the case of goods carried freight free—the amount of the normal freight in relation to the goods; and
- (ii) in the case of other goods—the amount by which the normal freight in relation to the goods exceeds the amount or the net amount

of the freight, expressed in Australian currency, paid or payable in respect of the carriage of the goods.

“(2.) In this section—

‘the normal freight’, in relation to goods exported to Australia, means 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 Australian currency, 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 general cargo vessels trading regularly with Australia, and to any other matter that the Minister considers relevant.”.

9. Section 11 of the Principal Act is amended by omitting the words “any of the last four preceding sections”, and inserting in their stead the words “section seven, eight, nine or ten of this Act”.

Injury not to include insubstantial injury.

10. Section 12 of the Principal Act is amended—

Emergency duty.

(a) by omitting from paragraph (a) of sub-section (1.) the word “or” (last occurring); and

(b) by omitting paragraph (b) of sub-section (1.) and inserting in its stead the following paragraphs:—

“(b) to producers or manufacturers in the United Kingdom of like or directly competitive goods; or

(c) to producers or manufacturers in another country of like or directly competitive goods the rate of the duty of Customs imposed on which in accordance with the First Schedule to the *Customs Tariff* 1965 is not greater than the rate of the duty of Customs so imposed on goods of the same kind the produce or manufacture of the United Kingdom.”.

11. Section 15 of the Principal Act is amended by omitting from sub-section (1.) the words “purpose of calculating the amount of any duty payable” and inserting in their stead the words “purposes of the imposition or calculation of any duty”.

Exchange rates.

Power to
specify goods.

12. Section 16 of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(2.) An instrument of exemption under sub-section (4.) of section seven, or sub-section (4.) of section eight, of this Act, may be expressed to apply to goods specified in any manner in which goods may be specified in a notice referred to in the last preceding sub-section.

“(3.) An instrument of exemption referred to in the last preceding sub-section may relate to goods that were entered for home consumption before the date of the instrument.”.

Application.

13. The amendments made by sections 3 and 8 of this Act do not apply in relation to goods that were entered for home consumption before the commencement of this Act.
