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PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS (VALUATIONS) AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(CIRCULATED BY THE AUTHORITY OF THE MINISTER
FOR BUSINESS AND CONSUMER AFFAIRS,
THE HONOURABLE JOHN MOORE, M.P.,)

Customs (Valuations) Amendment Bill 1981

Purpose of the Bill

The main purpose of this Bill is to amend the Customs Act 1901 to introduce into that Act new provisions for the valuation of imported goods for Customs duty purposes.

The new valuation provisions are designed to give effect to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (Customs Valuation). The Government decided to adopt this Agreement in May 1980, on an F.O.B. basis.

The decision to adopt this Agreement took into account the views of State Governments, industry associations and other interested groups within the importing community.

Presently, customs valuation is based upon the Brussel's Definition of Value which provides for the valuation of imported goods on a notional basis by comparing each actual transaction with an ideal transaction in which all the circumstances conform to an entirely open market or arms length situation.

The new valuation system provided for by this Bill differs from the present system to the extent that it is a positive system using actual prices and charges to arrive at a dutiable value for Customs purposes. The principal method of valuation of imported goods for Customs duty purposes will henceforth be based on the actual transaction value of imported goods. The transaction value will be the price actually paid or payable for imported goods when sold for exportation to the country of importation, after certain adjustments have been made to that price.

Where the transaction value of the imported goods cannot be used as the basis for their valuation, a sequence of alternative methods is provided based, as follows, on;

- the transaction value of identical goods;
- the transaction value of similar goods;
- the deductive value of the goods which is derived from the price the goods, or identical or similar goods fetch in sales on the Australian market;
- the computed value of the goods which is derived from the costs of the production of the goods; or
- such value as the Comptroller-General of Customs determines (subject to the limitations is proposed sub-section 157 (9)).

The other Amendments to the Customs Act proposed by this Bill -

- (i) remove the now redundant references to the United Kingdom and Ireland in sub sections 151A(1) and 151(8) following the elimination of preferential tariff treatment fo goods of British origin;
- (ii) amend section 266 of the Act to provide that a Scheme formulated pursuant to that Act shall be in writing to enable section 33(3) of the Acts Interpretation Act to apply to such Schemes for the purposes of amendment, revocation or variation; and
- (iii) make several formal amendments to the Principal Act.

Customs (Valuations) Amendment Bill 1981

- Clause 1 - Short title and identification of the Customs Act 1901 as the Principal Act.
- Clause 2 - Commencement provision. The valuation provisions shall come into operation by proclamation. This is to allow prior notice of the operative date to be given to the importing community. Clauses 4 and 9, which correct minor errors arising from earlier amending Acts, shall be deemed to have come into operation on the dates of commencement of those Acts.
- Clause 3 - Is a formal amendment to section 14 of the Principal Act.
- Clause 4 - Corrects a reference to sub-section 42(1) in sub-section 42(2). This sub-section became incorrect as a result of an amendment made to section 42 by the Customs Amendment (Tenders) Act 1981 which inserted a new sub-section 42(1A).
- Clause 5 - Amends section 95 of the Principal Act as a consequence of the amendments proposed in Clause 8 of the Bill.
- Clause 6 - Omits from section 151 of the Principal Act, the reference to film, the manufacture of the United Kingdom, as a result of the elimination of British preferential tariff margins from the Customs Tariff Act 1966.
- Clause 7 - Amends section 151A of the Principal Act to delete redundant references to the United Kingdom and Ireland following the elimination of British preferential tariff margins from the Customs Tariff Act 1966.
- Clause 8 - Repeals Division 2 of Part VIII of the Principal Act and inserts a new Division 2 to provide for the valuation of imported goods in accordance with the International Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (Customs Valuation).

Section 154

Sub-Section 154(1)

Defines a number of words and expressions for the purposes of the legislation and, in particular, defines -

- (i) 'price', in relation to goods the subject of a contract of sale to mean the aggregate of all payments made, or to be made, directly or indirectly, in connection with the goods by the purchaser to or for the benefit of the vendor (including any payment by the purchaser to a person other than the vendor to satisfy an obligation of the vendor) in accordance with the contract, whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes the value, as determined by a Collector, of any goods or services that are to be supplied by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale, but does not include any duties of customs, or any other taxes, payable under a law in force in Australia by reason of the importation or sale of the goods; and
- (ii) 'relevant transaction', in relation to goods to mean -
- (a) a contract of sale of the goods (not being a contract of sale that, in the opinion of a Collector, is a contract of sale on the domestic market of a country other than Australia) entered into before the goods became subject to Customs Control; or
- (b) if there were 2 or more such contracts - the latter or latest of those contracts.

Sub-Section 154(2)

Requires that, when the of price of goods is being ascertained;

- no regard shall be had to any subsequent rebate or decrease in that price. This will allow certainty of valuation at an early date. Any subsequent decrease in the price will be treated in the context of a refund under the Regulations; and
- adjustments shall be made, as necessary, to take account of certain matters that otherwise might be reflected in the contract price.

Sub-Section 154(3)

Provides for the maximum inland freight component of the price of goods, the produce or manufacture of Canada, to be that amount that would have been payable if the goods had been transported to the nearest point of exit in Canada. This continues the arrangements agreed to between Australia and Canada under the Canada/Australia Trade Agreement.

Sub-Section 154(4)

Sets out the circumstances in which two persons will be treated as related to each other for the purposes of the new Division. This is relevant to the question of when such a relationship might have influenced the price of the goods being valued (as to which see section 158).

Sub-Section 154(5)

Requires that the generally accepted accounting principles in a particular context shall be the accounting principles of the country that is the most relevant in that context.

Section 155

Sets out the criteria for the goods which are to be treated, for the purposes of the operation of the Division, as identical or similar to the goods to be valued.

Section 156

Provides for the customs value of imported goods, as determined in accordance with this Division, to be the value of the goods for the purposes of the Customs Tariff Act 1966.

Section 157

This is the principal section of the Division and it provides for the valuation of imported goods for Customs duty purposes to be based primarily on the actual transaction value of imported goods (sub-section 157(1)). The section also sets out a series of alternate methods to be used sequentially for valuing the goods where the Comptroller-General of Customs considers that the custom value of goods to be valued cannot be determined strictly in accordance with the transaction value.

The alternate methods are set out in sub-sections 157(2), 157(3), 157(6), 157(7) and 157(8). Sub-section 157(10) allows the owner of the goods to have the order of application of the methods set out in sub-sections 157(6) and 157(7) reversed.

Sub-Section 157(2)

Sets out the first alternative method, which provides for the goods to be valued by reference to-

- (a) the transaction unit price of identical goods;
- or
- (b) if, by reason that two or more lots of goods have been treated as identical goods for the purposes of the operation of this sub-section, there are two or more such unit prices - that one of those unit prices that is the lower or lowest of those unit prices.

Sub-Section 157(3)

Sets out the second alternative method to be employed if the methods set out in sub-sections (1) and (2) cannot be used to determine the customs value. This method provides for the goods to be valued by reference to -

- (a) the transaction unit price of similar goods;
- or
- (b) if, by reason that two or more lots of goods have been treated as similar goods for the purposes of the operation of this sub-section, there are two or more such unit prices - that one of those unit prices that is the lower or lowest of those unit prices.

Sub-Section 157(6)

Provides the third alternative method to be employed if the methods set out in sub-sections (1), (2) and (3) cannot be used to determine the customs value. This method provides for the customs value of the goods to be the deductive value which shall be calculated by reference to the deductive unit price of the goods determined in accordance with section 161.

Sub-Section 157(7)

Provides the fourth alternative method to be employed if the methods set out in sub-sections (1), (2), (3) or (6) cannot be used to determine the customs value. This method provides for the customs value of the goods to be the computed value determined in accordance with section 161A

Sub-Section 157(8)

Provides that, if the methods set out in sub-sections (1), (2), (3), (6) or (7) cannot be used to determine the customs value, the customs value shall be such value as the Comptroller-General of Customs determines. In determining the value the Comptroller-General is not to have regard to any of the matters specified in sub-section 154(9).

Section 158

Specifies a number of circumstances under which the Comptroller-General of Customs shall determine that a customs value of the goods cannot be determined in accordance with certain of the requirements of section 157. Importantly, the customs value cannot be determined unless the Comptroller-General is satisfied that there is sufficient reliable information for the purpose. If it appears that the relationship of the vender and purchaser in a relevant transaction may have influenced the price in that transaction, the owner of the goods is to be allowed the opportunity to satisfy the Collector that the relationship did not affect the price or that the price closely approximates one of several "test" values.

Section 159

Sets out the method by which the Collector of Customs shall determine the transaction value of goods. The transaction value shall be the amount of the price in the relevant transaction after adjustment, if necessary, to take account of commission or brokerage packing costs or charges, certain goods or services supplied free charge or at a reduced cost in connection with the production of the goods, certain royalties, certain proceeds of the latter disposition of the goods and certain costs of inland freight or insurance. Sub-section 159(4), (5), (6), and (7) provide the method of valuation for the goods or services supplied free of charge or at a reduced cost.

Section 160

Requires that a Collector shall make certain adjustments to the transaction value of identical or similar goods, if necessary, for the purposes of valuing the goods by reference to the transaction value of identical or similar goods.

Section 161

Sets out the method by which a Collector shall determine the deductive unit price of goods for the purposes of the alternative method for valuing goods pursuant to sub-section 157(6).

The deductive unit value is derived from the price that the goods to be valued or identical or similar goods, fetch in certain sales in Australia. Three categories of sale may be used for this purpose, sequentially, as follows:

- sales of the goods in their condition as imported occurring at or about the same time as the time of importation of the goods to be valued;
- sales of the goods in their condition as imported occurring during a period of 90 days after the importation of the goods to be valued; and
- (at the request of the owner only) sales of the goods after further assembly, packaging or processing in Australia occurring during a period of 90 days after the importation of the goods to be valued.

Provision is made for deductions to be made in determining the unit price of goods so sold if necessary to take account of a number of listed matters which reflect the costs of transportation of the goods to Australia and their sale in Australia.

Section 161A

Sets out the method by which a Collector shall determine the computed value of goods for the purposes of the alternative method for valuing goods pursuant to sub-section 157(7).

The computed value of imported goods is based on the costs of the production of the goods after making allowance for the value of goods or services supplied by a person in Australia free of charge or at a reduced cost and for the profit, general expenses and costs usually attendant on a sale of such goods for export to Australia.

Section 161B

Provides that, where the amount that is relevant to the valuation of imported goods is not an amount in Australian currency, such amount shall be the equivalent in Australian currency of that amount ascertained according to a fair rate of exchange at the date of exportation. The Minister may specify by Gazette notice a rate that is deemed a fair rate of exchange.

Section 161C

Requires a Collector to furnish certain information to the owner of imported goods if a request for the information is made by the owner within 28 days after being advised by a Collector of the value of the goods as determined under the new Division 2 of Part VIII proposed by clause 8.

Section 161D

Provides for the review by the Comptroller-General of Customs of a determination or other decision by an officer under the Division at any time within 12 months after the making of the determination or other decision. Sub-section (2) provides for the recovery, in accordance with section 165 of the Principal Act, of any amount short levied or erroneously refunded on the basis of the determination or other decision.

Clause 9 - This is a formal amendment to correct an incorrect reference inserted in the Customs Act by the Customs Amendment, Act 1981

Clause 10 - Amends section 266 of the Principal Act to enable section 33(3) of the Acts Interpretation Act 1901 to apply to the formulation of a Scheme under that section to allow such a Scheme to be amended, varied or revoked. Provision is made also for the amendment, variation or revocation of Schemes already formulated under the section.

- Clause 11 - Repeals a now redundant Schedule to the Principal Act, consequently upon the repeal by Clause 8 of the present Division 2 of Part VIII of the Principal Act.
- Clause 12 - Saving provision in respect of Gazette notices specifying a fair rate of exchange made under the present sub-section 158(2) of the Principal Act and the valuation of goods that came under Customs control before the commencement of this Act.