

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
Technology and Commerce, Senator the Honourable John N. Button)

Customs Tariff (Anti-Dumping) Amendment Bill 1988

Outline

This Bill, together with the Anti-Dumping Authority Bill 1988 and the Customs Legislation (Anti-Dumping) Amendment Bill 1988, comprise a legislation package amending Australia's anti-dumping legislation, to give effect to the Government's response to the Review of the Customs Tariff (Anti-Dumping) Act 1975 ("the Gruen Report"), prepared by Professor F.H. Gruen.

In particular, the Bill implements the recommendations of the Gruen Report to:

- . define the term "like goods" used in the legislation, by adopting the definition of the term as used in the GATT (clause 4);
- . allow for the publication of the normal value of goods as a guide to the Australian community (unless such publication will prejudice the business or commercial interests of a person) (clauses 9(c) and 10(c)) and provide a facility for those normal values to be re-ascertained (clause 8);
- . limit, in situations where the Minister directs that dumping or countervailing duty in respect of goods is to be an amount which is not greater than is necessary to prevent injury to the Australian industry producing like goods, the Minister's obligation to publish that information so that the business or commercial interests of a person are not prejudiced (clauses 9(g), 10(e), 11(j), and 12(d)); and
- . limit the period of a dumping notice or undertaking made under the Anti-Dumping Act to three years from the date of issuing the notice or the acceptance of an undertaking (with appropriate transitional provisions for notices already in existence) (clause 13), thus requiring industries which have benefited from protection under the Anti-Dumping Act and which still consider that short-term relief is required, to re-justify their claims for protection after three years. (Under existing provisions notices remain in force until revoked by the Minister.)

The Bill also makes various amendments to the existing legislation to make clear that the Act can only be invoked if the act of dumping injures an industry manufacturing like goods to the goods allegedly "dumped", and not just Australian industry generally (clauses 9(a) and (e), 10(a), 11(a), (d), (e), (f) and (g) and 12(a)).

Financial Impact Statement

The proposed amendments in this Bill have no direct financial implications.

NOTES ON CLAUSESShort Title etc.

Clause 1 provides for the citation of this Bill as the Customs Tariff (Anti-Dumping) Amendment Act 1988 (subclause 1(1)), and identifies the Customs Tariff (Anti-Dumping) Act 1975 as the Principal Act being amended by this Bill (subclause 1(2)).

Commencement

Clause 2 provides that:

- clauses 1 and 2 will come into operation on the day of Royal Assent of this Bill; and
- paragraph 4(a) and clause 5 are deemed to have commenced on 15 October 1987, the day on which the sea installations legislative package commenced operation.
- the remainder of the Bill will come into operation on the same day the Anti-Dumping Authority Bill 1988 commences operation, which will be a date to be proclaimed.

Repeal of section 3A

Clause 3 repeals section 3A of the Principal Act.

- this section currently vests the Comptroller-General of Customs with the general administration of the Act. As this Bill transfers the remaining powers held by the Comptroller-General under the Principal Act to the Minister (to enable the Anti-Dumping Authority's involvement in the process) this section is unnecessary.

Interpretation

Clause 4 Amends section 4 of the Principal Act. In particular, the clause:

- amends the definition of "importer" contained in the Principal Act by adding new paragraphs (d) and (e) which deem the beneficial owner of goods imported on to

sea installations from overseas, or are on board an overseas sea installation when the installation is installed in an area adjacent to Australia, or the beneficial owner of a sea installation to be an "importer" for the purposes of the Principal Act;

- during 1987 the Sea Installations Act 1987 (Act 102, 1987) and the Sea Installations (Miscellaneous Amendments) Act 1987 (Act 104, 1987), amongst other Bills, were passed, enabling Australian laws to apply to sea installations that may be installed in locations adjacent to Australian territory. These amendments are consequential to that package, and have the effect of applying Australian anti-dumping legislation to the beneficial owner of sea installations, or of goods that are taken on board, or are on sea installations;

.. These amendments are deemed to have commenced on 15 October 1987, the date that the other components of the sea installations legislation commenced operation.

. gives the term "like goods" a statutory definition. The definition now makes clear that the term applies to goods that are either identical to goods contained in the consignment which gave rise to the original dumping enquiry, or are goods that have characteristics (both physical and functional) closely resembling the goods under consideration;

- This definition encompasses the definition of "like goods" contained in Article 2.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("GATT"); and

. vests responsibility for making certain determinations contained in subsections 4(2), 4(3) and 4(3A) of the Principal Act in the Minister rather than the Comptroller-General.

Repeal of sections 4AA, 4AB and 4AC

Clause 5 repeals the above three sections from the Principal Act.

- . These sections deal with the application of anti-dumping legislation to offshore installations. With the passage of the sea installation legislation package in 1987, and the amendments to the definition of importer contained in the Principal Act (discussed above), these provisions are no longer necessary.

Export Price

Clause 6 amends section 4A of the Principal Act by vesting in the Minister rather than in the Comptroller-General of Customs the responsibility for making certain determinations under subsections 4A(1), 4A(2), 4A(3) and 4A(4) of that Act, relating to ascertaining the export price of goods.

- . these amendments are consequential on the establishment of the Anti-Dumping Authority and will now accommodate its participation in the dumping process.

Normal value of goods

Clause 7 amends section 5 of the Principal Act by

- . vesting responsibility for making determinations with regard to establishing the "normal value" of goods (that is, the price that is, or is constructed to be, the price ordinarily paid for like goods to the goods in question in the country of export) contained in section 5 of the Principal Act in the Minister rather than the Comptroller-General of Customs (paragraphs (b), (d) and (f));
 - these amendments are consequential on the establishment of the Anti-Dumping Authority and will now accommodate its participation in the dumping process;
- . adding a head of power for regulations to identify the special circumstances where a profit margin is to be taken into

account when constructing the "normal value" of goods (paragraphs (a), (c) and (e));

- these amendments will give effect to the Government's policy that in most circumstances, and especially in the absence of any regulations, a zero profit will be imputed in constructing normal values, to prevent unrealistically high constructed prices.

Minister may re-ascertain certain normal values

Clause 8 inserts a new section 5AA to the Principal Act.

Once a case of dumping has been established against particular goods or like goods (as defined), leading to a notice to be issued against those goods under sections 8,9,10 or 11 of the Principal Act, the new subclause 5AA(1) permits the Minister to notify in the Gazette variations to the normal value of the goods originally determined when the relevant notice was issued.

- The facility to re-ascertain what is the "normal value" of the goods (a concept discussed below) takes into account, amongst other things, price variations since the imposition of the notice imposing special duties on the goods.

Dumping duties

Clause 9 amends section 8 of the Principal Act, by which dumping duties may be imposed on goods.

paragraphs 9(a) and 9(e) make clear that dumping duties may only be imposed if an Australian industry producing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not Australian industry generally.

paragraphs 9(b) and 9(d) make minor technical amendments to various provisions contained in the section, by amending the term "goods of that kind" to

read "like goods" (a term now proposed to be defined in the Principal Act by this Bill.)

- paragraph 9(c) provides that notices issued pursuant to section 8 imposing dumping duty on particular goods, or like goods to the goods under investigation, shall include a statement of the "normal value" ascertained in respect of the goods.
- paragraphs 9(f) and 9(g) introduce a qualification to the Minister's power under subsection 8(5) of the Principal Act (whereby the Minister can Gazette the dumping duty in respect of the goods as an amount which is not greater than is necessary to protect an Australian industry producing like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person;
- paragraph 9(h) transfers the power to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister.

Third country dumping duties

Clause 10 amends section 9 of the Principal Act, by which third country dumping duties may be imposed on goods.

- paragraph 10(a) makes clear that third country dumping duties may only be imposed if a third country producer or manufacturer producing or manufacturing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not third country producers or manufacturers generally.
- paragraph 10(b) makes a minor technical amendment to the section, by amending the term "goods of that kind" to read "like

goods" (which is the term now proposed to be defined in the Principal Act by this Bill).

- paragraph 10(c) provides that notices issued pursuant to section 9 imposing third country dumping duty on particular goods, or like goods to the goods under investigation, shall include a statement of the "normal value" ascertained in respect of the goods.
- paragraphs 10(d) and 10(e) introduce a qualification to the Minister's power under subsection 9(5) of the Principal Act (whereby the Minister can Gazette the third country dumping duty in respect of the goods as an amount which is not greater than is necessary to protect a third country producer or manufacturer of like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person.
- paragraph 10(f) transfers the power to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister.

Countervailing duties

Clause 11 amends section 10 of the Principal Act, by which countervailing duties may be imposed on goods.

- paragraphs 11(a), 11(d), 11(e), 11(f) and 11(g) makes clear that countervailing duties may only be imposed if an Australian industry producing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not Australian industry generally.
- paragraphs 11(b) and 11(c) insert the statutory term "like goods" into various provisions contained in section 10.
- paragraphs 11(h) and 11(j) introduce a qualification to the Minister's powers

under subsection 10(5) of the Principal Act (whereby the Minister can Gazette the countervailing duty in respect of the goods as an amount which is not greater than is necessary to protect an Australian industry producing like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person.

- paragraph 11(k) transfers the power to determine the amount of subsidy etc. in certain circumstances (subsection 10(7) of the Principal Act) and to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister (subsections 10(8) and 10(9) of the Principal Act).

Third country countervailing duties

Clause 12 amends section 11 of the Principal Act, by which third country countervailing duties may be imposed on goods.

- paragraph 12(a) makes clear that countervailing duties may only be imposed if a third country producer or manufacturer producing or manufacturing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not third country producers or manufacturers generally.

- paragraph 12(b) makes a minor technical amendment to the section, by amending the term "goods of that kind" to read "like goods" (a term proposed to be defined in the Principal Act by this Bill).

- paragraphs 12(c) and 12(d) introduce a qualification to the Minister's power under subsection 11(5) of the Principal Act (whereby the Minister can Gazette that the third country countervailing duty in respect of the goods as an amount which is not greater than is necessary to protect a third country producer or manufacturer of like goods from injury) to prevent publication of information

which, in the Minister's opinion, would adversely affect the business or commercial interests of any person).

- paragraph 12(e) transfers the power to determine the amount of subsidy etc. in certain circumstances (subsection 11(7) of the Principal Act) and to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister.

Clause 13 inserts new sections 12A and 12B into the Act.
Minister to give notice of decision not to impose duty.

- The proposed new section 12A requires the Minister to place a notice in the Gazette indicating that the Minister, having considered a recommendation from the Anti-Dumping Authority, has decided not to impose duties pursuant to the Principal Act.

Period during which certain notices and undertakings to remain in force.

- The proposed new subsections 12B(1),(2) and (3) provide that a notice imposing duties, or any "undertakings" (a concept discussed below) made pursuant to the provisions of the Principal Act after the commencement of this Bill will only remain in force for a maximum period of three years, (if no notice has been previously issued for like goods) or, if a previous notice has been issued with regards to like goods, all notices will expire three years after the date the first notice was published.

- the new subsections 12B(4) and 12B(5) provide that notices issued pursuant to "relevant notification provisions" (as defined by subclause 12B(7)) shall expire:

- if the notice was published, or the undertaking was given prior to 1 March 1986 - on 1 March 1989 ; or
- if the notice was published or undertaking given on or after 1

March 1986, and before the commencement of this Act - 3 years after the notice was published, or undertaking given.

These "sunset provisions" accept the comments of Professor Gruen in his Review of the Customs Tariff (Anti-Dumping) Act 1975 that the anti-dumping system was to be seen predominantly as "emergency" protection against predatory acts of dumping or subsidisation and not as a continuing source of tariff protection for particular Australian industries against foreign competition.

Repeal of section 15

Clause 14 repeals section 15 of the Principal Act.

section 15 permits the Minister to refer to the Industries Assistance Commission various questions regarding the existence or otherwise of facts that would enable the Minister to make decisions pursuant to anti-dumping legislation. These questions are now to be considered by the Anti-Dumping Authority, to be established by the Anti-Dumping Authority Bill 1988.

Revocation of notices etc.

Clause 15 amends section 20 of the Principal Act by adding

new subsections 1A and 2A to permit the Minister to release an exporter from an undertaking given pursuant to the Act.

Regulations

Clause 16 inserts a new Section 22 into the Principal Act, which is a standard regulation making power, to permit the making of regulations that are required to be made, or that are necessary or convenient to be made, for the carrying out or giving effect to the Act.

Transitional

Clause 17

is a standard savings provision deeming certain decisions and delegations of power made by the Comptroller-General of Customs under powers that have been transferred to the Minister by this Act to have been made by the Minister.

