



Customs Legislation (Anti-Dumping Amendments) Act 1988

No. 76 of 1988

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Customs Legislation (Anti-Dumping Amendments) Act 1988

No. 76 of 1988

An Act to amend the *Customs Act 1901* and the *Industries Assistance Commission Act 1973*, and for related purposes

[Assented to 24 June 1988]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Customs Legislation (Anti-Dumping Amendments) Act 1988*.

Commencement

2. This Act commences on the commencement of the *Anti-Dumping Authority Act 1988*.

PART II—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

3. In this Part, “Principal Act” means the *Customs Act 1901*¹.

Right to require security

4. Section 42 of the Principal Act is amended by adding at the end of subsection (1B):

“but no such security shall be required or taken under this Act:

- (a) on an application under section 269TB of this Act in respect of the goods to which the application relates before the time at which the Comptroller has made a preliminary finding under section 269TD that there are sufficient grounds for the publication by the Minister of a dumping duty notice or a countervailing duty notice within the meaning of Part XVB in respect of those goods; or
- (b) on like goods imported into Australia before that time.”

Cancellation of bonds

5. Section 45 of the Principal Act is amended:

(a) by omitting subsection (2) and substituting the following subsection:

“(2) A security taken in respect of any duty that may become payable on goods under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*, being a security taken before the publication by the Minister of a notice declaring that section to apply to those goods, shall be cancelled before the expiration of the prescribed period after the date of the security.”;

(b) by adding at the end the following subsection:

“(4) Where:

- (a) a notice is published by the Minister declaring section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975* to apply to goods of a particular kind that may be imported into Australia;
 - (b) goods of that kind are imported while that notice is in force; and
 - (c) security is taken after the importation of those goods in relation to the duty that may be payable in respect of them;
- subsection (2) does not apply in relation to that security.”

6. Section 269T of the Principal Act is repealed and the following sections are substituted:

Interpretation

“269T. (1) In this Part, unless the contrary intention appears:

‘Anti-Dumping Act’ means the *Customs Tariff (Anti-Dumping) Act 1975*;

'approved form' means a form approved by the Comptroller in writing;

'Authority' means the Anti-Dumping Authority established by section 4 of the *Anti-Dumping Authority Act 1988*;

'countervailing duty' means duty payable on goods under section 10 (other than duties so payable by virtue of a declaration under subsection 10 (2B), (2C) or (2D)) or under section 11 of the Anti-Dumping Act;

'countervailing duty notice' means a notice published by the Minister under subsection 10 (1) or (2) or 11 (1) or (2) of the Anti-Dumping Act;

'dumping duty' means a duty payable on goods under section 8 or 9 of the Anti-Dumping Act;

'dumping duty notice' means a notice published by the Minister under subsection 8 (1) or (2) or 9 (1) or (2) of the Anti-Dumping Act;

'interested party', in relation to an application made to the Comptroller under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application, means:

- (a) the applicant;
- (b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods;
- (c) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and
- (d) the Government of the country from which the goods the subject of the application have been or are likely to be exported or of any country that has exported or is likely to export to Australia like goods;

'like goods', in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

"(2) For the purposes of this Part, goods, other than unmanufactured raw products, shall not be taken to have been produced in Australia unless:

- (a) the goods were wholly or partly manufactured in Australia; and
- (b) not less than one quarter of the factory or works cost of the goods is represented by the sum of:
 - (i) the value of labour in Australia;
 - (ii) the value of materials in Australia; and
 - (iii) the factory overhead expenses incurred in Australia in respect of the goods.

“(3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

“(4) For the purposes of this Part, there shall be taken to be an Australian industry in respect of goods of a particular kind if there is a person who produces like goods in Australia or there are 2 or more such persons.

“(5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:

- (a) that have been imported into Australia;
- (b) that are likely to be so imported; or
- (c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

“(6) Sundays and public holidays shall, notwithstanding the definition of ‘days’ in section 4 be counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection shall derogate from the operation of section 36 of the *Acts Interpretation Act 1901*.

Minister may give directions to Comptroller in relation to powers and duties under this Part

“269TA. (1) The Minister may give to the Comptroller such written directions in connection with carrying out or giving effect to the Comptroller’s powers and duties under this Part as the Minister thinks fit, and the Comptroller shall comply with any directions so given.

“(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Comptroller in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Comptroller’s powers.

“(3) Where the Minister gives a direction to the Comptroller, the Minister shall:

- (a) cause a written notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and
- (b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.

“(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Application for action under Anti-Dumping Act

“269TB. (1) Where:

- (a) a consignment of goods:
 - (i) has been imported into Australia;
 - (ii) is likely to be imported into Australia; or
 - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;
- (b) there is, or may be established, an Australian industry producing like goods; and
- (c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Comptroller, request that the Minister publish that notice in respect of the goods in the consignment.

“(2) Where:

- (a) a consignment of goods produced or manufactured in a country other than Australia:
 - (i) has been imported into Australia;
 - (ii) is likely to be imported into Australia; or
 - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;
- (b) there is, in a third country, a producer or manufacturer of like goods who exports such goods to Australia; and
- (c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Comptroller, request that the Minister publish that notice in respect of the goods in the consignment.

“(3) An application under subsection (1) or (2) shall:

- (a) be in accordance with an approved form;
- (b) include such information relating to:
 - (i) the matters referred to in paragraphs (a) and (b) of that subsection; and
 - (ii) the matters which the applicant believes constitute reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice to which the application relates;as is required by the form; and
- (c) be signed and witnessed in the manner indicated in the form.

Consideration of application

“269TC. (1) The Comptroller shall, before the expiration of a period of 55 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after lodgment of an application by a person under subsection 269TB (1) in respect of the goods the subject of the application, examine the application and, if the Comptroller is not satisfied:

- (a) that the application complies with subsection 269TB (3);
- (b) that there is, or is likely to be established, an Australian industry in respect of like goods; and
- (c) that the matters that are set out in the application as constituting reasonable grounds for the publication of the dumping duty notice or the countervailing duty notice in respect of the goods the subject of the application would, if established, constitute reasonable grounds for the publication of such a notice, or for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

“(2) The Comptroller shall, before the expiration of a period of 55 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after lodgment of an application by the government of a country under subsection 269TB (2) in respect of the goods the subject of the application, examine the application and, if the Comptroller is not satisfied:

- (a) that the application complies with subsection 269TB (3);
- (b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; and
- (c) that the matters that are set out in the application as constituting reasonable grounds for the publication of the dumping duty notice or the countervailing duty notice in respect of the goods the subject of the application would, if established, constitute reasonable grounds for the publication of such a notice, or for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

“(3) Where, in accordance with subsection (1) or (2), the Comptroller rejects an application, the notice informing the applicant of that rejection:

- (a) shall state the reasons why the Comptroller was not satisfied of one or more of the matters set out in that subsection; and
- (b) shall inform the applicant of the applicant’s right to refer the decision of the Comptroller in respect of the matters in respect of which the Comptroller was not so satisfied to the Authority for review.

“(4) Where the Comptroller does not reject an application in respect of the goods the subject of the application made under subsection 269TB (1) or (2), the Comptroller shall publish a notice in the *Gazette* and in a newspaper circulating in each State and in the internal Territories:

- (a) setting out particulars of those goods;
- (b) setting out the identity of the applicant and:
 - (i) in the case of an application under subsection 269TB (1), the identity of the producer or producers; and
 - (ii) in the case of an application under subsection 269TB (2), the identity of the producer or manufacturer who exports like goods to Australia;
- (c) stating that, within a specified period after the publication of the notice, being the period of 120 days or, if another period is prescribed by regulations for the purposes of this paragraph, that other period, the Comptroller will make a preliminary finding as to whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods;
- (d) stating that a preliminary finding that there are or will be such grounds may result in the imposition of provisional measures including the taking of securities under section 42 of this Act for the period specified in subsection 45 (2) of this Act in respect of dumping duty or countervailing duty that may become payable on the importation of the goods the subject of the application; and
- (e) inviting interested parties to lodge, within a specified period after publication of the notice, being a period of 40 days or, if a lesser period is indicated in the notice, that lesser period, submissions with the Comptroller, concerning the publication of the notices sought by the application;

and shall give a copy of that notice to the applicant.

Preliminary findings

“269TD. (1) After the end of the period for lodging submissions in respect of an application for the imposition of dumping duty or countervailing duty but before the end of the period referred to in paragraph 269TC (4) (c), the Comptroller shall consider the application, taking into account any submissions received and any other matters that the Comptroller considers relevant.

“(2) If, as a result of that consideration of the application, the Comptroller makes a preliminary finding that there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods:

- (a) the Comptroller shall, by notice in writing published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories, declare that he or she has made such a preliminary finding and give a copy of that notice to the applicant;
- (b) the Comptroller shall, within 7 days of publication of that notice in the *Gazette*, refer the question whether the publication of the notice sought in the application is so justified to the Authority; and
- (c) the Comptroller may, if he or she thinks it appropriate to do so, upon the importation of goods to which the application relates, require and take securities under section 42 of this Act in respect of any dumping duty or countervailing duty that may become payable.

“(3) If, as a result of that consideration of the application, the Comptroller makes a preliminary finding that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods, the Comptroller shall, by notice in writing published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories, declare that he or she has made such a preliminary finding and give a copy of that notice to the applicant.

“(4) A notice informing an applicant that the Comptroller has made a preliminary finding that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods:

- (a) shall state the reasons why the Comptroller has made such a preliminary finding; and
- (b) shall inform the applicant of his or her right to refer the finding to the Authority for review of that finding.

Comptroller to have regard to same considerations as Minister in certain circumstances

“269TE. (1) Where the Comptroller, in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application or in making a preliminary finding under section 269TD in relation to those goods, is required to determine any matter ordinarily required to be determined by the Minister under the Anti-Dumping Act in respect of those goods, the Comptroller shall determine the matter in like manner as if he or she was the Minister and having regard to the same considerations as the considerations to which the Minister would be required, under that Act, to have regard if the Minister were determining the matter.

“(2) Subsection (1) applies in respect of goods that have not, at the time of the Comptroller’s determination of a matter in respect of those

goods, been imported into Australia, as if the Comptroller's determination of the matter were being made after an importation of those goods into Australia, being an importation occurring at the time of the anticipated importation of those goods into Australia.

“(3) Nothing in subsection (1) shall be taken to imply that the determination of a matter by the Comptroller affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Anti-Dumping Act.

Reviews by Authority

“269TF. (1) Application may be made to the Authority by a person who has lodged an application under section 269TB in a manner and form approved by the Authority for the purposes of this subsection, and within a period prescribed for the purposes of this subsection, for the review by the Authority of:

- (a) a decision by the Comptroller under subsection 269TC (1) or (2) to reject the application so lodged; or
- (b) a decision by the Comptroller under subsection 269TD (3) to the effect that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods.

“(2) Where the Authority decides to revoke the decision of the Comptroller under subsection 269TC (1) or (2) to reject an application and to substitute a decision accepting that application then, with effect from the day that the Authority so decides, this Act shall have effect as if the substituted decision were a decision of the Comptroller and, accordingly, the Comptroller shall publish a notice in the *Gazette* and in a newspaper as required under subsection 269TC (4).

“(3) Where the Authority decides to revoke a preliminary finding of the Comptroller that under subsection 269TD (3) there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods and to substitute a preliminary finding that there are or will be such grounds then, with effect from the day the Authority so decides, this Act shall have effect as if the substituted finding were a preliminary finding of the Comptroller the making of which had been duly published in accordance with paragraph 269TD (2) (a), which had been duly referred to the Authority under paragraph 269TD (2) (b) and in respect of which the Comptroller may exercise the powers specified in paragraph 269TD (2) (c).”.

Inquiries in relation to undertakings

7. Section 269U of the Principal Act is amended by omitting from subsection (1) the words preceding paragraph (a) and substituting the following:

“(1) Where the Minister is considering, in relation to goods the subject of an application under section 269TB:”.

Repeal of section 269V

8. Section 269V of the Principal Act is repealed.

**PART III—AMENDMENTS OF THE INDUSTRIES ASSISTANCE
COMMISSION ACT 1973**

Principal Act

9. In this Part, “Principal Act” means the *Industries Assistance Commission Act 1973*².

Reference of matters to Commission

10. Section 23 of the Principal Act is amended:

- (a) by omitting paragraph (5) (a);
- (b) by inserting in paragraph (5) (b) “(other than the *Customs Tariff (Anti-Dumping) Act 1975*)” after “Customs Tariff”.

NOTES

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42, and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; and Nos. 51, 76, 81 and 104, 1987.
2. No. 169, 1973, as amended. For previous amendments, see No. 91, 1976; No. 1, 1978; No. 74, 1981; No. 80, 1982; Nos. 21 and 75, 1983; Nos. 2, 63 and 72, 1984; and No. 65, 1985.

[*Minister's second reading speech made in—
House of Representatives on 28 April 1988
Senate on 24 May 1988*]