

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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ANTI-DUMPING AND COUNTERVAILING DUTIES

Australian "Customs Tariff (Dumping and Subsidies) Act" 1961

The Australian Government has transmitted to the secretariat the text of the new "Customs Tariff (Dumping and Subsidies) Act" of 1961 which repeals the "Customs Tariff (Industries Preservation) Acts" of 1921, 1922, 1933, 1936, 1956 and 1957¹.

For the information of contracting parties, the text of the Act, except for the introductory paragraphs, is reproduced below.

¹See GATT publication "Anti-dumping and Countervailing Duties", (pages 26 et seq.).

INTERPRETATION

Paragraph 4

1. In this Act, unless the contrary intention appears - "export price", in relation to goods that have been or are being exported to Australia, means -

- (a) an amount, expressed in Australian currency, that is equal to the price paid or payable to the exporter, or an agent in Australia of the exporter, for the goods (including free on board charges in the country of export); or
- (b) if the Minister is of opinion that adequate information as to the price so paid or payable cannot be obtained - an amount, expressed in Australian currency, that is equal to the price estimated by the Minister to be the price so paid or payable;

"the normal value" in relation to goods that have been or are being exported to Australia, means whichever of the following amounts, as ascertained by the Minister, expressed in Australian currency, is determined by the Minister, to be the normal value of those goods:-

- (a) an amount equal to the fair market value of like goods sold in the country of export for home consumption in the ordinary course of trade plus free on board charges paid or payable in that country in respect of the goods, but not including any duties or other taxes paid or payable in that country in respect of the goods, being duties or taxes that are remitted or refunded on export;
- (b) an amount equal to the highest comparable price paid for like goods sold in the country of export for export to a third country in the ordinary course of trade plus free on board charges paid or payable in the country of export in respect of the goods, but not including any duties or other taxes paid or payable in the country of export in respect of the goods, being duties or taxes that are remitted or refunded on export;
- (c) an amount equal to the fair market value of like goods produced or manufactured, and sold, in a third country selected 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, in the ordinary course of trade for home consumption in that third country plus such amount as is estimated by the Minister to be the cost of placing the goods free on board in the country of export, but not including any duties or other taxes paid or payable in the third country in respect of the goods being duties or taxes that are remitted or refunded on export; or

- (d) an amount equal to the sum of-
- (i) the cost of production or manufacture of the goods or, if the Minister is of opinion that adequate information as to the cost of production or manufacture of the goods cannot be obtained, such amount as is estimated by the Minister to be the cost of production or manufacture of the goods;
 - (ii) free on board charges paid or payable in the country of export in respect of the goods; and
 - (iii) such additional amount in respect of selling costs and profit as is determined by the Minister;

"the Tariff Board" means the Tariff Board established under the Tariff Board Act 1921-1960.

2. In this Act-

- (a) a reference to an inquiry by the Tariff Board shall be read as including a reference to such an inquiry held or commenced to be held before the commencement of this Act; and
- (b) a reference to a report by the Tariff Board shall be read as including a reference to a report made upon such an inquiry.

INCORPORATION

Paragraph 5

The Customs Act 1901-1960 is incorporated and shall be read as one with this Act.

IMPOSITION OF DUTIES OF CUSTOMS

Paragraph 6

Duties of customs are imposed in accordance with this Act.

DUMPING DUTY

Paragraph 7

1. If the Minister is satisfied, after inquiry and report by the Tariff Board-

- (a) that goods that are produced or manufactured outside Australia and have been or are being exported to Australia have been, are being or may be sold to a person in Australia at an export price that is less than the normal value of the goods at the date of exportation; and

- (b) that the importation 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.

2. Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the dumping duty").

3. The amount of the dumping duty in respect of any goods is a sum equal to the amount by which the export price of the goods is less than the normal value of the goods at the date of exportation.

4. The Minister may, by instrument in writing, exempt goods from the dumping duty if he is satisfied-

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- (b) that the difference between the export price of the goods and the normal value of the goods at the date of exportation does not exceed ten per centum of the normal value and that the exemption would not cause injury to an Australian industry producing or manufacturing like or directly competitive goods; or
- (c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

5. Where the Minister exempts goods from the dumping duty under the last preceding sub-section by reason of his being satisfied as to a matter specified in paragraph (a) or (b) of that sub-section, the instrument of exemption shall be published in the Gazette.

DUMPING DUTY - THIRD COUNTRY

Paragraph 8

1. If the Minister is satisfied-

- (a) that goods that are produced or manufactured in a particular country and have been or are being exported to Australia have been, are being or may be sold to a person in Australia at an export price that is less than the normal value of the goods at the date of exportation; and

- (b) that the importation 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. Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the third country dumping duty").

3. The amount of the third country dumping duty in respect of any goods is a sum equal to the amount by which the export price of the goods is less than the normal value of the goods at the date of exportation.

4. The Minister may, by instrument in writing, exempt goods from the third country dumping duty if he is satisfied-

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- (b) that the difference between the export price of the goods and the normal value of the goods at the date of exportation does not exceed ten per centum of the normal value and that the exemption would not cause injury to the trade in the Australian market of producers or manufacturers in the third country of like or directly competitive goods; or
- (c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

5. Where the Minister exempts goods from the third country dumping duty under the last preceding sub-section by reason of his being satisfied as to a matter specified in paragraph (a) or (b) of that sub-section, the instrument of exemption shall be published in the Gazette.

COUNTERVAILING DUTY

Paragraph 9

1. If the Minister is satisfied, after inquiry and report by the Tariff Board, in respect of goods that are produced or manufactured in a particular country and have been or are being exported to Australia-

- (a) that a subsidy, bounty, reduction or remission of freight or other financial assistance has been or is being paid or granted directly or indirectly upon the production, manufacture, carriage or export of those goods; and

- (b) that the importation 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.

2. Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the countervailing duty").
3. The amount of the countervailing duty in respect of any goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance referred to in sub-section 1. of this section.
4. If the Minister is of opinion that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined by the Minister.
5. In this section, "financial assistance" includes the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales.

COUNTERVAILING DUTY - THIRD COUNTRY

Paragraph 10

1. If the Minister is satisfied, in respect of goods that are produced or manufactured in a particular country and have been or are being exported to Australia-
- (a) that a subsidy, bounty, reduction or remission of freight or other financial assistance has been or is being paid or granted directly or indirectly upon the production, manufacture, carriage or export of those goods; and
- (b) that the importation 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. Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the third country countervailing duty").

3. The amount of the third country countervailing duty in respect of any goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance referred to in sub-section 1. of this section.
4. If the Minister is of opinion that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined by the Minister.
5. In this section, "financial assistance" includes the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales.

INJURY NOT TO INCLUDE INSUBSTANTIAL INJURY

Paragraph 11

A reference in any of the last four preceding sections to an injury does not include a reference to an insubstantial injury and a reference in section seven or nine of this Act to the hindering of the establishment of an Australian industry does not include a reference to an insubstantial hindrance to the establishment of such an industry.

EMERGENCY DUTY

Paragraph 12

1. If the Minister is satisfied that any goods that are produced or manufactured in a particular country have been or are being imported into Australia under such conditions as to cause or threaten serious injury-
 - (a) to producers or manufacturers in Australia of like or directly competitive goods; or
 - (b) to producers or manufacturers in a third country of like or directly competitive goods that are dutiable at a rate applicable under the British Preferential Tariff or at a rate lower than the rate that would be applicable under that tariff,

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

2. Upon the publication of a notice under this section, there shall be charged, collected and paid to the use of the Queen for the purposes of the Commonwealth, on goods specified in the notice imported into Australia, a special duty (in this section referred to as "the emergency duty").

3. The amount of the emergency duty in respect of any goods is a sum equal to the amount, if any, by which the landed duty-paid cost of the goods is less than a reasonably competitive landed duty-paid cost ascertained as determined by the Minister.
4. In making a determination under the last preceding sub-section in relation to goods produced or manufactured in a particular country, the Minister shall, if like or directly competitive goods produced or manufactured in another country are being imported into Australia, have regard to the landed duty-paid cost of the last-mentioned goods.
5. In this section, "the landed duty-paid cost" means-
 - (a) in relation to goods that have been purchased by the importer - the amount, expressed in Australian currency, that is equal to the cost to the importer (including the amount of any duty of customs other than the emergency duty) of the goods landed in Australia; or
 - (b) in relation to any other goods (including goods consigned by the producer or manufacturer of the goods for sale in Australia) - the amount, expressed in Australian currency, that would have been the landed duty-paid cost, in accordance with the last preceding paragraph, if the person who owned the goods at the time of their importation into Australia had, before the goods were imported, sold them to a person in Australia and that last-mentioned person had imported them into Australia.
6. Where, in relation to any goods, the Minister is of opinion that-
 - (a) it is difficult to ascertain the landed duty-paid cost; or
 - (b) the purchase price or any other item of cost to be included in the landed duty-paid cost was not fixed in good faith on a commercial basis,

the Minister may determine the landed duty-paid cost, having regard to costs of production and manufacture in the country in which the goods were produced or manufactured and other relevant matters.

NOTICES NOT TO BE PUBLISHED IF INCONSISTENT
WITH INTERNATIONAL OBLIGATIONS

Paragraph 13

The Minister shall not cause a notice to be published under sub-section 1. of section eight, ten or twelve of this Act unless he is satisfied that the publication of the notice is not inconsistent with the obligations of the Commonwealth under any international agreement relating to tariffs or trade.

DUTIES TO BE CHARGED SEPARATELY

Paragraph 14

The several duties imposed by this Act shall be separately charged, notwithstanding that more than one duty applies to any particular goods.

ASCERTAINMENT OF EQUIVALENT AMOUNT IN
AUSTRALIAN CURRENCY FOR PURPOSE OF CALCULATING DUTY

Paragraph 15

1. For the purpose of calculating the amount of any duty payable under this Act in respect of any goods, the equivalent amount in Australian currency of an amount calculated in a currency other than Australian currency shall be ascertained in accordance with a fair rate of exchange at the date of exportation of the goods.
2. For the purpose of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the Gazette, a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to a currency-
 - (a) on a date, or during a period, preceding the date of publication of the notice; or
 - (b) from and including the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.
3. The rate of exchange specified in relation to a currency in pursuance of the last preceding sub-section shall, for the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange that shall be applied for the purpose of sub-section 1. of this section in respect of the currency specified in the notice.

POWER TO SPECIFY GOODS

Paragraph 16

The powers given by this Act to the Minister to cause notices to be published specifying goods extend to the publication of notices specifying-

- (a) goods of a particular class or kind;
- (b) goods exported from a particular country;
- (c) goods contained in a particular shipment;

- (d) goods exported by a particular exporter;
- (e) goods specified in such other manner as the Minister thinks fit;
and
- (f) goods entered for home consumption before the date of publication of the notice as well as goods entered for home consumption on or after that date.

REVOCATION OF NOTICES

Paragraph 17

1. The Minister may, by notice published in the Gazette, revoke a notice specifying goods published in pursuance of this Act.
2. Upon the revocation of a notice, the special duty on goods specified in the notice ceases to be payable, and shall not be charged or collected, on goods entered for home consumption on or after the date of revocation.

SPECIAL DUTIES TO BE ADDITIONAL TO ORDINARY DUTIES

Paragraph 18

The special duties payable under this Act are in addition to such other duties of customs (if any) as are payable under any other Act.