

1983

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Administrative Services and Minister Assisting the Minister for Industry and Commerce, the Honourable John J. Brown MP)

CUSTOMS AMENDMENT BILL 1983OUTLINE

The main purpose of this Bill is to amend the Customs Act 1901 to introduce a new system for granting tariff concessions, to be known as the Commercial Tariff Concession System.

The new System is a modification of the existing Commercial By-law System and follows a report by the Industries Assistance Commission.

Essentially the System is based on a new criterion which will provide for Commercial Tariff Concessions to be issued where the Minister is satisfied that no goods serving similar functions are produced or are capable of being produced in the normal course of business in Australia.

Interpretation of the key words "similar functions" is provided for in the Bill. The test of whether goods serve similar functions will be the degree of cross elasticity of demand between them. Essentially this comes down to the question of whether the imported goods compete with or have the potential of competing with Australian produced goods. This will require a practical and realistic assessment of the market situation.

The provisions further provide that the Minister can refuse to grant a concession if, in his opinion, the granting of the concession would be likely to have a substantially adverse effect on the market for Australian produced goods or if it would not be in the national interest.

The Bill defines Produce of Australia and also provides for an "Exclusions Schedule" - a listing of goods, classes or kinds of goods or tariff items which will be ineligible for consideration under the new System. These exclusions will be prescribed in the Customs Regulations.

Another aspect of the System provided for by the Bill is the advertising of applications for new concessions in the Commonwealth Gazette. This will allow local manufacturers and other interested parties an opportunity to have their views taken into consideration before a decision is made.

Decisions taken under the new Commercial Tariff Concession System will be reviewable under the existing internal review procedures. There is also provision for applicants who wish to make further requests for review to seek a reference to the Industries Assistance Commission and the operation of the new System is subject to the provisions of the Administrative Decisions (Judicial Review) Act 1977.

Consequential amendments are being made to the Industries Assistance Commission Act 1973 and the Customs Tariff (Anti-Dumping) Act 1975.

The Bill also amends the provisions in the Principal Act relating to goods eligible for tender quota and alters the origin provisions in respect of Forum Island Countries, Declared Preference Countries and Developing Countries.

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- Clause 1 Citation of the Amendment Act and identifies the Customs Act 1901 as the Principal Act.
- Clause 2 Provides for the various commencement dates.
- Clause 3 Amends section 151 of the Principal Act and provides that Papua New Guinea content is to be included in determining whether goods are to be regarded as the manufacture of a Forum Island Country, a Declared Preference Country or of an Developing Country.
- Clause 4 Adds a new sub-section to section 265 of the Principal Act and provides that tender quota may be used to enter for home consumption goods which are imported into Australia before the commencement of a quota period.
- Clause 5 Inserts a new Part XVA into the Principal Act dealing with Commercial Tariff Concession Orders.

Section 269B

Contains interpretative provisions for this Part and in particular provides that -

- goods will be taken to serve similar functions unless there is not, in any significant part of Australia, significant cross elasticity of demand between those goods;
- goods will not be taken to have been produced in Australia unless they were wholly or partly manufactured in Australia and not less than a quarter of the factory or works cost is represented by the sum of the value of labour and materials and factory overhead expenses;
- goods will 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; and
- a person shall be taken to be capable of producing goods in the normal course of business if he is prepared to accept orders for the supply of such goods that have been, are being, or are to be, produced by him.

Section 269C

Provides that the Minister shall make a written order, to be known as a Commercial Tariff Concession Order, allowing goods or a class or kind of goods to be imported at concessional rates of duty where he is satisfied that no goods serving similar functions are produced, or are capable of being produced, in the normal course of business in Australia.

Section 269D

Provides that certain goods may be declared by Regulation to be ineligible for concessional entry under the system.

Section 269E

Provides that the Minister may refuse to make a concession order in respect of particular goods if, in his opinion, the granting of the concession:

- would be likely to have a substantially adverse effect on the market available for Australian produced goods; or
- would not be in the national interest.
- where the Minister refuses to make a concession order on the grounds of national interest, details of the refusal shall be published in the Gazette.

Section 269F

Provides that the Minister shall not make a concession order that would allow goods to be imported at rates of duty less than those agreed to by Australia pursuant to an international trade agreement.

Section 269G

Provides that a person may apply to the Minister for a concession order and specifies the manner in which such an application is to be lodged and the effective date of lodgement.

Section 269H

Provides that a person may give notice to the Minister that he proposes to make an application for a concession order and specifies the manner in which such notice is to be given and the effective date of lodgement.

Section 269J

The scheme of the Bill is that the making of a concession order must be preceded by an application. Where a concession order is to be made following a report of the Industries Assistance Commission or the Temporary Assistance Authority or where the Minister considers it appropriate, an application shall be deemed to be made.

Section 269K

Provides that where the Minister decides not to make a concession order, notice thereof shall be given to the applicant. Where such notice has been given, the Minister is not precluded from giving further consideration to the application or reversing his earlier decision to refuse.

Section 269L

Provides that the Minister shall not make an order unless details of the application are first published in the Gazette and a period of 28 days is allowed for interested persons to comment thereon.

Section 269M

Provides that a concession order be published in the Gazette as soon as practicable after it is made. Failure to comply with this requirement does not affect the validity of the order.

Section 269N

Specifies the conditions under which a concession order shall apply to goods and the manner in which the commencement date of the order shall be determined. In particular, the commencement date that would otherwise apply to an order may be varied where the actions of an officer of the Department have effectively delayed the lodgement of an application.

Section 269P

Provides that in certain circumstances the Minister may revoke a concession order but that this discretion may not be exercised if he considers that such action would give an unfair advantage to any person. Notice of revocation is to be published in the Gazette and "in transit" provisions are to apply in the specified circumstances. A revocation comes into effect on the date the order of revocation is made.

Section 269Q

Specifies that a concession order shall not be deemed to be a statutory rule.

Section 269R

Provides that a person whose interests are affected by the making of an order, the revocation of an order or the refusal to make an order, may request the Minister to refer the matter to the Industries Assistance Commission for inquiry and report. This does not apply where a refusal has been made on the grounds of national interest. The Minister is not required to comply with such a request nor is he obliged to accept the recommendations of the Industries Assistance Commission should he refer the matter to it.

Section 296S

Provides that the Minister may, by notification in the Gazette, specify the manner in which certain costs, values and expenses are to be determined.

Clause 6

Amends section 273GA of the Principal Act to allow applications to be made to the Administrative Appeals Tribunal for review of a decision by the Minister relating to the commencement date of certain concession orders.

